



MASSACHUSETTS MEDICAL SOCIETY

Every physician matters, each patient counts.

**TESTIMONY IN SUPPORT OF:
H.1501, AN ACT RELATIVE TO PATIENT CARE ACCESS;
H.1502, AN ACT TO ENCOURAGE QUALITY REVIEWS AND REDUCE COST IN HEALTH
CARE; AND
H.1578/S.1029, AN ACT RELATIVE TO PREJUDGMENT INTEREST RATES
BEFORE THE JOINT COMMITTEE ON JUDICIARY
June 27, 2023**

The Massachusetts Medical Society (MMS) is a professional association of over 25,000 physicians, residents, and medical students across all clinical disciplines, organizations, and practice settings. The Medical Society is committed to advocating on behalf of patients, to provide them a better health care system, and on behalf of physicians, to help them provide the best care possible. The MMS wishes to be recorded in strong support for the above referenced legislation intended to enhance quality reviews and the efficient provision of high quality health care, improve the fairness of the tort system, the availability of insurance for physicians and the ability of physicians to continue to treat patients in the Commonwealth.

The threat of medical liability litigation hovers over physicians like a cloud and imposes rising costs on the nation's health system. More than one in three physicians, 34 percent, have had a medical liability lawsuit filed against them at some point in their careers, according to the American Medical Association's Division of Economic and Health Policy Research. The longer physicians are in practice, the likelier it is that they will have experienced a lawsuit. Preserving quality and access in medicine, while reducing cost, requires fairness in the civil justice system. Every dollar spent on the broken medical liability system is a dollar that cannot be used to improve patient care.

H.1501 is the most comprehensive of these bills. Section 1 and 2 of that bill updates the definition of medical peer review committee to include ACO's and ensures that the proceedings, reports and records of medical peer review committees, including those formed by ACO's, are confidential and exempt from the disclosure of public records laws, thus ensuring that hospitals and physician organizations can use to facilitate honest conversations about quality improvement

Section 3 would grant the Board of Registration in Medicine the authority to review the testimony of a physician serving as a witness in a trial relative to medical malpractice in the event that it is alleged that the physician gave false or incompetent testimony relative to a medical service or procedure. The Board of Registration in Medicine does not have any authority to review the physician conduct as it relates to medical competency. This legislation would grant the BRM the authority to review the testimony from a clinical perspective as to the standard of medical care.

Section 4 would require professional liability insurers and risk management organizations that provide coverage to annually report to the Betsey Lehman Center for Patient Safety and Medical Error Prevention the top ten categories of losses, claims or actions for damage for personal injuries, and top defendant specialties as to cost and frequency of cases in the prior year. The Center shall use this information in the development of evidence-based best practices to reduce medical errors and enhance patient safety. The

Center will also use this information to increase awareness or error prevention strategies through public and professional education.

Section 5 would enhance existing provisions allowing for the introduction into evidence of collateral sources that pay to the plaintiff as a result of the malpractice, negligence, error, omission, mistake or the unauthorized rendering of services. Current law allows for introduction of evidence of collateral sources that replaced, compensated, or indemnified any cost or expense related to medical care, custodial care or rehabilitation services, loss of earnings or other economic loss. This provision would allow future sources to be included as evidence of collateral sources.

Section 6 would require that an expert witness in an action against a physician be board certified in the same specialty as the defendant physician. Currently all that is required is a determination that the expert is fair and impartial.

Section 7 would allow the payment of future damage in periodic payments to be determined by the court where the total damages awarded equals or exceeds \$50,000. Currently the award can be directed to be a lump sum. Allowing periodic payments allows for the purchase of annuities that lower the overall cost to the system.

Section 8 would set the rate that can be charged on prejudgment interest on damages for the plaintiff at a rate of the average accepted auction price for the last auction of the fifty-two week US treasury bills settled immediately prior to the date on which the verdict was rendered or the finding or order made. Currently cases brought as wrongful death actions are assessed at an interest rate of 12% which adds unwarranted costs to jury awards for such cases.

H.1502, *An Act to Encourage Quality Reviews and Reduce Costs in Health Care*, includes similar provisions as H.1501, including updating the definition of medical peer review committee and setting the judgment interest rate for all medical malpractice cases at the current federal funds rate.

H.1502, Section 3 addresses the issue of causation as an essential element of findings of negligence in medical malpractice. Fairness dictates that defendants must be found to have caused harm through their actions or inactions. Adoption of this section would restore the standard of care established prior to Supreme Judicial Court decisions which recognized the loss of chance or opportunity doctrine. The loss of chance doctrine creates liability in circumstances in which an undesirable outcome was more likely than not, regardless of the actions of the health care provider.

Section 4 would create a new way of determining damages to a plaintiff in a medical liability case. If the court finds that a settlement was unfairly withheld, the damages would be triple the interest on that settlement or award rather than the entire underlying award.

Finally, H.1578 and S.1029, *An Act Relative to Prejudgment Interest Rates*, are similar to H.1501, Section 8, and H.1502, Section 2, and thus are supported by the MMS.