



May 12, 2017

The Honorable James T. Welch
Senate Chair, Joint Committee on Health Care Financing
State House
Room 413-B
Boston, MA 02133

Dear Chairman Welch:

The American Osteopathic Association (AOA) and the Massachusetts Osteopathic Society (MOS) are writing to strongly encourage you to support HB 605. This bill would require a plaintiff to have had a greater than 50% opportunity to survive or achieve a better outcome in order to recover damages in a professional liability action against a health care provider. Allowing recovery for plaintiffs who had a less than 50% chance sets the bar inappropriately low and discourages physicians from accepting high risk patients or performing difficult or experimental procedures. As such, the AOA and MOS strongly support limiting professional liability recoveries in such cases, by establishing a more appropriate standard.

The AOA represents nearly 130,000 osteopathic physicians (DOs) and osteopathic medical students, promotes public health, encourages scientific research, serves as the primary certifying body for DOs and is the accrediting agency for osteopathic medical schools. More information on DOs/osteopathic medicine can be found at www.osteopathic.org. MOS is a professional medical organization that represents the over 1,000 DOs providing patient care in Massachusetts.

While the AOA and MOS support adequate compensation for injured plaintiffs, we believe that awarding compensation when there was a less than 50% chance that the plaintiff would have survived or would have had a better outcome will establish inappropriate incentive for frivolous lawsuits. Under the normal “preponderance of the evidence” standard of proof, a patient would have to show that it was more likely than not (greater than 50%) that the defendant physician caused his or her harm. Where the plaintiff already had a less than 50% chance before beginning treatment, this standard is impossible to meet, because the harm was more likely than not caused by the underlying disease.

Holding physicians liable in this case discourages them from treating patients with significant injuries or serious diseases with poor prognoses. Further, allowing a plaintiff to recover for a reduction in his or her chances for a better outcome where a poor outcome was already likely due to the underlying disease raises the question of whether a court would compensate a patient who survives

The Honorable James T. Welch

May 12, 2017

Page 2

but suffers a statistically reduced chance of survival going forward, even though the only claimed harm is a potentiality that may never occur.

The AOA and MOS believe that allowing recovery for plaintiffs who had a less than 50% chance of survival or of a better result when they began treatment will have a chilling effect on the practice of medicine, making physicians less willing to enter high-risk specialties or perform difficult procedures, and ultimately reducing the availability of care for all patients with complex illnesses. We urge you to protect access to care for Massachusetts' patients by **supporting HB 605**. Should you need any additional information, please feel free to contact Nicholas Schilligo, MS, AOA Associate Vice President of State Government Affairs, at nschilligo@osteopathic.org or (800) 621-1773, ext. 8185.

Sincerely,



Boyd R. Buser, DO
President, AOA



William Foley, DO, MSc
President, MOS

CC: Mark A. Baker, DO, AOA President-elect
Joseph A. Giaimo, DO, Chair, AOA Department of Governmental Affairs
Michael K. Murphy, DO, Chair, AOA Bureau of State Government Affairs
Adrienne White-Faines, MPA, AOA Chief Executive Officer
Laura Wooster, MPH, Senior Vice President, AOA Public Policy
Nicholas Schilligo, MS, Associate Vice President, AOA State Government Affairs
Samyuktha Gumidyala, MPH, Affiliate Executive, MOS