



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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**CORPORATION COUNSEL MICHAEL A. CARDOZO
URGES MEDICAL MALPRACTICE REFORM
BEFORE GOVERNOR'S MEDICAID TASK FORCE**

***CARDOZO'S TESTIMONY BEFORE A TASK FORCE SUBGROUP HIGHLIGHTS THE NEED
TO AVOID A "LITIGATION LOTTERY" AND PROMOTE MORE EFFECTIVE WAYS
TO RESOLVE MED MAL DISPUTES***

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New York, Oct. 27, 2011 – In a presentation today to Governor Andrew Cuomo's Medicaid review committee, Corporation Counsel Michael A. Cardozo of the New York City Law Department discussed tort reform and medical malpractice; proposed recommendations to limit costs relating to these as they affect city and state medical providers; and called for an end to what he termed the "litigation lottery."

Governor Cuomo convened the task force, called the New York State Medicaid Redesign Team, early this year in response to skyrocketing Medicaid costs. Corporation Counsel Cardozo was invited to speak before a committee subgroup, called the Medical Malpractice Work Group, and present New York City's perspective on how medical malpractice laws can be reformed.

The Corporation Counsel highlighted "the huge price the City pays for state tort laws that urgently need reform." He noted that the City paid out more than \$565 million in suits in the past fiscal year of which \$143 million involved med mal suits. "The cost of tort payouts in general, and medical malpractice claims in particular, imposes a significant strain on New York City," he noted.

Cardozo discussed the current dilemma. "The tort systems goal, I think we would all agree, is to fairly compensate the victim of a defendant's negligence, and to do so promptly and efficiently. However, this basic goal of the tort system, I submit, is not being met today by the tort laws that surround medical malpractice in this State."

In his testimony, the Corporation Counsel addressed 12 key recommendations for revamping the state med malpractice system, including:

- Adopting the \$250,000 cap on pain and suffering awards that had been previously recommended by the Governor's Redesign Team (and included in the Governor's 2011-2012 budget).
- Establishing "schedules" or numeric criteria to guide juries in determining and calculating non-economic damages, thus better addressing the wide-ranging verdicts that can often result.
- Requiring that a plaintiff have at least \$5,000 in medical expenses in order to qualify for non-economic damages, thus ensuring that exorbitant damages don't occur when minor injuries are involved.
- Limiting "joint and several" liability for economic damages when a defendant is not primarily at fault (thus a defendant like New York City wouldn't have to pay 100 percent of the damages if it is, say, 30-percent responsible for an accident).
- Expanding the number of cases adjudicated by judges specifically trained in med mal cases.

- Expanding the use of court-assisted mediation as a means of resolving med mal cases outside of the courtroom.
- Encouraging courts to decide whether scientific and medical testimony in med mal cases is sufficiently reliable to be heard by a jury.
- Authorizing the appointment by judges of independent experts to calculate future medical costs and the cost of custodial care – and to analyze certain issues related to liability (e.g., standard of care and causation) in order to guide juries better.
- Establishing rules that would encourage doctors to “apologize” to patients and/or allow them to offer sympathetic responses without the risk of those outreaches being used against them in court.
- Protecting statements by doctors to hospital quality assurance committees from discovery in lawsuits.
- Requiring the plaintiff to submit an “affidavit of merit” signed by a doctor confirming that the suit has merit and that each named defendant is an appropriate party to the suit (instead of a general, unsworn “certificate of merit” that only applies to the case as a whole, not each plaintiff).
- Requiring each party to identify its experts by name, and to produce the expert for deposition should the other party so request, in order to promote the earlier resolution of cases and provide a crucial opportunity for parties to probe their adversary’s expert opinions.

“The current system creates a ‘litigation lottery’ in which plaintiffs receive awards for difficult-to-quantify, non-economic losses. These are often unrelated to the severity of the plaintiff’s injuries and vary wildly based on the quality of their lawyers, sympathy or the decisions of particular juries. It’s unfair all around,” Cardozo emphasized to the committee, which consists of 12 experts in the health field, judges, doctors, plaintiffs’ lawyers and other medical representatives.

Any questions relating to the Corporation Counsel’s testimony from today can be directed to the Law Department’s Media Office at media@law.nyc.gov or (212) 788-0400.

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