



*Representing the advocacy interests
of hospitals and health systems on Long Island and in the Hudson Valley*

OPPOSITION

MEMORANDUM

February 26, 2018

To: Senate Majority Leader John Flanagan
Senate Co-Leader Jeffrey Klein
Assembly Speaker Carl Heastie
Members, Long Island Delegation of the New York State Legislature
Members, Hudson Valley Delegation of the New York State Legislature
Members, Independent Democratic Conference

From: Kevin W. Dahill, President and CEO

Re: A.9030 (Dinowitz)/S.243 (DeFrancisco)

This bill would prohibit defense counsel in a malpractice lawsuit from privately interviewing a plaintiff's treating physician(s). The plaintiff's attorney, however, still would be at liberty to interview the plaintiff's treating physician without limitation. **The Suburban Hospital Alliance of New York State strongly opposes A.9090/S.243, which would prevent defendants from learning all relevant information about a plaintiff's condition.**

The legislation would codify a sharp deviation from acceptable practice and institutionalize a basic litigation inequity. It is an ingrained practice in liability litigation that witnesses are interviewed prior to any deposition. In fact, The Court of Appeals 2007 decision in *Arons v. Kutkowitz* established practices that require litigants to seek out all relevant information to assure greater fairness in the adjudication of civil lawsuits. This bill would contradict judicial policy by helping plaintiffs keep relevant information out of the defendants' reach.

Passing A.9030/S.243 would result in longer, more protracted and more expensive litigation, and a rolling back of the free and open discovery process that the courts view as essential. New York is in need of true malpractice reform that balances the rights of patients to receive fair compensation and the need for rational procedures and limitations that keep malpractice premiums affordable. The Suburban Hospital Alliance opposes legislation that further tilts the balance in favor of the plaintiffs and their counsel and increases premiums.

The Suburban Hospital Alliance strongly opposes this legislation and urges you to vote against it.