



ALAMEDA-CONTRA COSTA MEDICAL ASSOCIATION

6230 Claremont Avenue Oakland, CA 94618 - Tel (510) 654-5383 - Fax (510) 654-8959 - www.accma.org

June 23, 2021

The Honorable Lorena Gonzalez
Chair of the Appropriations Committee
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

RE: SB 447 (Laird), as amended April 22, 2021 – OPPOSE UNLESS AMENDED

Dear Assembly Member Gonzalez:

On behalf of the **Alameda-Contra Costa Medical Association**, which represents over 5,000 physicians in the Bay Area, I am writing to urge you to oppose SB 447 by Senator Laird, which would allow non-economic damages (i.e. pain and suffering damages) to be awarded in survival actions unless it is amended. SB 447 will give rise to increased costs to health care providers and patients, more litigation clogging California's courts, and will threaten the viability of provider practices to continue to deliver care to patients. At a time when providers have been on the frontlines caring for COVID-19 patients, and patients will continue to need access to vital services, SB 447 would place yet another financial burden on physician practices and health facilities' ability to continue to provide that care.

SB 447 will increase the frequency and cost of health care liability litigation which will increase costs for all health care providers in California. According to a survey conducted by ACCMA in 2020, nearly 83% of physicians surveyed anticipated an impact to their personal income as a result of the COVID-19 pandemic, with over 28% of physicians anticipating more than 25% reduction in their personal income. For physicians who are facing an income reduction of 25% or more as a result of the COVID-19 pandemic, an increase in health care liability premiums can be devastating and may lead to shuttering of practice doors, particularly for physicians in independent practice. In California's central valley and rural areas, 60% of the primary care practices that closed earlier in the year have not reopened. According to a recent CMA survey, 87% of practices in California are worried about financial health, with 25% of practices experiencing a revenue decline of 50%+. The ramifications of this bill would increase liability premiums for providers and add to the costs of providing care for practices hard hit by the pandemic. An increase in liability premiums for providers who have already taken a financial hit during the pandemic will lead to more practices closing at a time where patient access to care is of utmost importance. These health care providers are the same people who have been making tremendous sacrifices – some have died and exposed their families to COVID – during the pandemic to care for their patients.

Injured persons and their heirs already have significant protections, options, and avenues to be compensated for their losses in a way that balances the public policy interest of preserving access to health care services while providing appropriate compensation to injured people. SB 447 proposes to allow recovery of non-economic damages for the first time in a decedent's lawsuit when remedies are already available to decedents' heirs including (1) unlimited economic and punitive damages in a decedent's action, and (2) unlimited economic and non-economicⁱ damages in a survivor's wrongful death action. Additionally, current law also allows plaintiffs to file for an expedited hearing due to extenuating circumstances.ⁱⁱ The current system, under normal operating conditions, has historically operated well in allowing for an expedited trial based on a



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claimant's health. The best interest of the injured person is well served in those cases by allowing for calendar priority and quick resolution, either through trial or settlement, thereby avoiding a lengthy litigation process and allowing the injured person to testify during the proceedings and have their claims be fully adjudicated. This bill makes an unnecessary change in the law in response to a temporary circumstance that already has a solution.

To address these concerns, the ACCMA supports the amendments requested by and outlined in the letter submitted by a coalition of health care providers on May 25, 2021 that would allow for any personal injury action filed and in which the plaintiff requests trial preference under existing law because the plaintiff is not expected to survive long enough to get through trial, and the setting of the preferred trial date is delayed due to the COVID-related court backlog, if the plaintiff dies before trial is completed, the survivors are entitled to recovery of interest at the legal rate on any judgment obtained calculated from the time of filing of a request for trial preference.

This approach recognizes the impact the COVID-19 pandemic has had on patients and consumers, the backlog it has created in the courts, and the need for consumers to be compensated for the pain and suffering they have sustained, while also recognizing and upholding current law as it relates to an expedited trial and the long-standing standard for non-economic damages.

As currently drafted, SB 447 will be an unwarranted expansion of damages for injuries that the successor-in-interest did not incur, as well as another vague, subjective, and unlimited source for larger awards and settlements in personal injury cases, ultimately enabling plaintiffs' lawyers (who typically get a percentage of any settlement or judgment) to collect more fees. The resulting settlements in personal injury cases will be borne by fault-free consumers having to pay higher prices for goods and services, and higher premiums for insurance.

Thank you in advance for your consideration of our position and amendments to SB 447. If you have any questions, please contact me or ACCMA Executive Director Joe Greaves at jgreaves@accma.org or by calling 510-654-5383. Thank you for your support.

Sincerely,

Suparna Dutta, MD
ACCMA President

CC: Assm. Rebecca Bauer-Kahan
Assm. Jim Frazier
Assm. Tim Grayson
Assm. Alex Lee
Assm. Bill Quirk
Assm. Buffy Wicks

ⁱ Non-economic damages are unlimited except where Welfare & Institutions Code § 15657 and Civil Code § 3333.2 apply.

ⁱⁱ Code of Civil Procedure § 36.