American Property Casualty Insurance Association
INSURING AMERICA apci.org

March 11, 2025

Representative Robert E. Craven, Sr.
Chair, House Judiciary Committee
Rhode Island State House
Providence, RI 02903

Re: House 5903 – An Act Relating To Courts And Civil Procedure – Procedure Generally – Evidence

Dear Chair Craven:

This statement in opposition to H.5903 is submitted by the American Property Casualty Insurance Association (APCIA).[1] This bill repeals the collateral source rule in Rhode Island for medical malpractice actions (Section 9-19-34.1), thereby allowing plaintiffs to secure damages windfalls that are likely to ultimately increase costs.

Currently in medical malpractice cases, the parties may introduce evidence of their costs. Defendants provide evidence of the amount payable as a benefit to the plaintiff. Plaintiffs provide evidence of their contributions to secure their rights to any insurance benefits demonstrated by the defendant. The jury is then instructed to reduce the damages award by the difference between total benefits received and total amount paid to secure them. For example, if damages are found to be $1,000, the defendant proved they already provided $500 in benefits, and the plaintiff proved that they already paid $100 to secure those benefits, the court award would be $600[2].

The public policy behind the rule as laid out in statute is that a plaintiff should not be compensated twice for their injury and thus such windfalls should be discouraged. Section 9-19-34.1 was enacted as a reaction to dire circumstances as the primary medical malpractice insurance provider was facing "an accelerated negative financial position resulting in a fund deficit" because of the increasing number of claims filed and their costs.[3] The Legislature also noted that medical and dental malpractice claims were often filed "many years after a cause of action occurs, thereby creating a situation where an unreasonable amount of interest on claims has accrued." This is especially acute in Rhode Island which has some of the highest pre-trial interest rates in the country.

Repealing the collateral source rule for medical malpractice actions paints a misleading picture for the jury by allowing plaintiffs to artificially inflate the damages actually suffered and by promoting a fiction as to the medical bills actually incurred. It also allows plaintiffs' counsel to utilize the higher special damages figure when arguing for a larger general damages award. Accordingly, H.5903 would likely lead to higher, unreasonable settlement demands and more costly litigation. Higher settlements and higher jury

[1] Representing nearly 65% of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. Several APCIA members are located in Rhode Island and many more do business here. Together, APCIA members write almost 68.5% of the commercial insurance sold in the state.
[2] $1,000-($500-$100) = $600
[3] *Reilly v. Kerzer*, C.A. No. PC1999-4098 (R.I. Super. Aug. 10, 2000) https://casetext.com/case/reilly-v-kerzer

awards have important tort cost ramifications for the medical community and consumers. Now is not the time to add more damage claims that will further negatively impact health care providers, residents and businesses in Rhode Island.

Proponents of H.5903 are likely to point to a 2000 Rhode Island Superior Court case, *Reilly v. Kerzer*[4], which held Section 9-19-34.1 unconstitutional. The case also notes that the medical malpractice insurance market has become more competitive than when the law was enacted and medical malpractice cases are relatively rare[5]. The counter, of course, is that those are results demonstrating the law's success, rather than reasons for its elimination.

Furthermore, in 2004, the state's highest court rejected[6] the arguments used in that case[7], declined to address constitutionality despite having a great opportunity to do so, and issued a retort to the *Reilly* court's over-ambitious leap to rule on constitutionality:

> in declining to rule on the constitutionality of the subject statute, the Court notes that it is "imperative that a trial justice, in the exercise of his or her judicial authority, not resolve a constitutional issue unless and until . . . necessity for such a decision is clear and imperative." Devane v. Devane, 581 A.2d 264, 265 (R.I. 1990);see also O'Connell v. Bruce, 710 A.2d 674 (R.I. 1998)

H.5903 is designed to increase verdicts for trial lawyers without regard for the social costs it will inflict. As a result, APCIA respectfully requests that H.5903 be held for further study and not advanced in this session.

Very truly yours,

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[4] *Reilly v. Kerzer*, C.A. No. PC1999-4098 (R.I. Super. Aug. 10, 2000), https://casetext.com/case/reilly-v-kerzer

[5] Media paints a significantly different picture, see e.g. https://fortune.com/2024/07/02/medical-malpractice-payouts-ballooning-insurers-warning-cost-patients-health-personal-finance/, "From 2013 to 2023, the American court system saw a roughly 67% increase in the number of medical malpractice verdicts awarding $10 million or more. Last year, more than half of these verdicts awarded $25 million or more in damages to patients. The average of the top 50 MPL verdicts increased 50% in 2023 to $48 million each from $32 million each in 2022." In Rhode Island, there were 460 medical malpractice cases between 2008-2018, with a mean payment value of $517,104. http://rimed.org/rimedicaljournal/2022/08/2022-08-52-contribution-barre.pdf

[6] *Esposito v. O'Hair*, C.A. No. PC01-1542 (R.I. Super. Apr. 6, 2004), https://casetext.com/case/esposito-v-ohair

[7] *Reilly* based its decision on the presumption that "where the collateral source is Medicare, § 9-19-34.1 is of no value whatsoever in spreading the losses caused to a victim of medical malpractice as was intended by the legislature." *Esposito*, however, found that Medicaid is not included in the statute, in large part because while insurance is defined as "a contract or agreement by which one party, the insurer commits to do something of value for another party, the insured, Medicaid is "not a form of contract or agreement; it is a statutory benefit provided to certain qualifying individuals." In that sense Medicare and Medicaid operate in exactly the same way.

Furthermore, the court in *Reilly* claimed that the legislature intended to "spread a portion of the risk of medical-malpractice awards to other insurance providers." The court very speculatively justified that presumption by assuming that if the legislature intended otherwise, they would have instead imposed caps on damages awards. However, in *Esposito*, the court rejected the defendants' contention that "the statute's remedial purpose was to shift the risk of medical expenses in medical malpractice actions from liability insurers to providers of collateral sources." Instead, the court found that "the collateral source statute is clearly not remedial…"