

**Center for Justice & Democracy ❖ Center for Medical Consumers  
Citizen Action of New York ❖ CURE-NY ❖ NYPIRG ❖ PULSE**

March 24, 2008

Honorable David Paterson  
Executive Chamber  
State Capitol  
Albany, New York

Dear Governor Paterson:

The undersigned patient safety, consumer protection and healthcare groups are writing to express our concerns about the openness and transparency of the medical malpractice review that Insurance Superintendent Eric Dinallo and Health Commissioner Richard Daines conducted during the previous administration. We are gravely concerned that any recommendations that are the product of such process will not serve the public interest.

As you may know, in September of last year then-Governor Spitzer formed a Medical Malpractice Liability Task Force to offer recommendations to reform the system and, hopefully, reduce the shocking incidence of malpractice and medical negligence plaguing the state. While some of us were asked to serve on the Task Force, others were not offered a seat at the table, despite expertise in health care and insurance, and a long, distinguished history of advocating for the rights of consumers and patients.

We were dismayed initially at the composition of the task force. The three patient and consumer advocates were outnumbered by the more than twenty representatives of hospitals, physicians, insurers, and providers. But at least, we believed, the process was open and transparent, and a robust discourse would allow for a careful scrutiny of the many claims made by self-interested stakeholders. Unfortunately, our hopeful expectations were met with contempt, resistance, and secrecy.

Consumer advocates on the Task Force tried repeatedly to obtain all data available to task force leaders that would have helped to analyze insurers' asserted problems, craft balanced solutions and reform a system reeling from the budget gimmicks and cynical political sidestepping of the Pataki era. Only a limited amount of information was disclosed to us, some accompanied by threatening gag orders, while reasonable questions at Task Force meetings were met with open hostility by Superintendent Dinallo.

To make matters worse, since the last task force meeting in December, there has been absolutely no communication with the patient safety and consumer members of the task force. We were alarmed to read recent press accounts reporting that the Medical Society was told that a "major reform proposal" will be unveiled shortly.

We are particularly distressed that lobbyists for doctors and hospitals seem to have participated fully in crafting some sort of indemnity system – something never discussed

at the task force meetings and of which we know absolutely nothing. And, we are shocked to learn from the *Buffalo News* that Superintendent Dinallo and Commissioner Daines may be seeking to backtrack from former Governor Spitzer's laudable proposal to prohibit the use of Medicaid funds to pay for egregious medical errors. Asking Medicaid to assume the burden of subsidizing malpractice in the state is completely wrong-headed. In light of the state's current fiscal crisis, it would be a budget-busting bailout for the state's most dangerous doctors.

We refuse to be mere window dressing, to be used as stage props to create the illusion of inclusion, while proposals that affect the life and safety of every health care consumer in our state are drafted in secret. We hope you will redirect the state's efforts towards reducing the deaths and injuries caused by a tiny fraction of the state's physicians, rather than enabling error, negligence, and malpractice to be subsidized by taxpayers.

We have given up hope that consumer and public interest organizations will be included in the consideration of any medical malpractice reform proposals, including regulations and legislation, without your intervention. We therefore respectfully request that you instruct your staff to provide us with working drafts of any proposals that are under consideration, so that they can be thoroughly vetted in a thoughtful, open, transparent, and democratic process. We hope you would agree that a secretive process that excludes representatives of consumer and patient interests is more likely than not to result in bad public policy. We sincerely hope that you will act immediately to ensure that a vigorous, and public debate of these issues takes place, and that the rights of patients are protected by policymakers.

Sincerely yours,

Center for Justice & Democracy  
Center for Medical Consumers  
Citizen Action of New York  
CURE-NY (Consumers United for Research and Education, a coalition of 13 groups)  
PULSE (Persons United Limiting Substandards and Errors in Health Care)  
NYPIRG (New York Public Interest Research Group)