

LAW OFFICES OF
PAUL M. MONZIONE, P.C.

TWO SOUTH MAIN STREET • SECOND FLOOR
P.O. BOX 1478
WOLFEBORO, NEW HAMPSHIRE 03894
(603) 569-9599
TELEFAX (603) 569-0599

Reply to: Wolfeboro Office
Paul M. Monzione

April 17, 2012

Representative Stephen J. Schmidt
59 Spruce Road
Wolfeboro, NH 03894-4113

Re: Senate Bill 406

Dear Stephen:

As I was unable to attend the hearing before the House Judiciary Committee today, I am writing with regard to Senate Bill 406 on behalf of myself and as a member and immediate Past President of the New Hampshire Association. I am also writing to provide helpful information from the perspective of someone who deals with these issues on behalf of New Hampshire citizens on a daily basis. While I certainly appreciate all of your efforts with regard to this proposed legislation, and I am certain that you are motivated to serve the interests of your constituents and not that of the insurance industry, this bill will not help the everyday person, but rather will benefit only the insurance industry.

New Hampshire should not be the first state in the United States to allow the insurance industry to have a bill such as this enacted into law knowing that it will be the beginning of further efforts by the insurance industry to erode the rights of us New Hampshire citizens protected under our Constitution to obtain full recourse when we have been wronged.

This multi paged, very complex proposed legislation is very unlikely to ever be implemented in a way that benefits the citizens of New Hampshire. It is far too complicated for any layperson to fully appreciate, and for that reason, will most likely have a very unfair result for any patient who signs onto this scheme. If our goal is to make laws less complicated and make government easier for the people, this bill should not be passed.

This bill purports to give patients an option to settle their claims early when they have been injured, devastated by a doctor's or other healthcare provider's negligence. However, it is reasonable to conclude that representatives of the insurance companies will be ready to present

SAN FRANCISCO OFFICE
1388 SUTTER STREET, SUITE 910
SAN FRANCISCO, CA 94109
(415) 346-9600
TELEFAX: (415) 928-4136

PORTSMOUTH OFFICE
74 BOW STREET, SUITE 206
PORTSMOUTH, NH 03801
(603) 334-9800
TELEFAX: (603) 569-0599

Representative Stephen J. Schmidt

this option to patients who are not represented by attorneys and who because of their medical condition or their being under the influence of pain medications, or their being in a desperate situation, are incapable of making an intelligent choice.

It is also reasonable to conclude that when presented with the option, representatives from the insurance companies will highlight the provisions of the bill that will make it appear attractive. An unknowing and unsophisticated patient having been sold this option will sign on not appreciating that certain real aspects of his or her damages are either completely undervalued or not included at all. The patient will also not appreciate that more likely than not, a dispute will arise over the true value of lost income, past, present, and future, or that medical expenses will be up for dispute as well.

This scenario will likely lead to an offer that is not acceptable because it is based on an under evaluation determined by an insurance company. At that point, the patient will have given up his or her constitutional right to be fully and adequately compensated in a fair and just jury trial with a jury of their peers, and instead will have signed onto an insurmountable burden of proof by clear and convincing evidence of gross negligence. The one who benefits in this scenario is clearly the insurance company, not the injured patient whose life has been horribly altered by an act of medical negligence.

As for any patient who has the benefit of being represented by an attorney, that attorney, knowing that insurance companies in the vast majority of cases under evaluate the damages suffered by the victims of negligence, will simply never avail the client of this legislation. As such, this multi-page, very complex, and unnecessary piece of legislation will never be used by attorneys representing victims of medical malpractice.

Accordingly, not only will this bill be used only by the insurance industry to gain an unfair advantage over patients who have suffered as a result of medical negligence, it will likely be the first of many subsequent attempts on the part of the insurance industry to enact similar legislation across the board for all claims anyone injured by negligence may have.

The New Hampshire government does not need to interpose itself in our trial by jury system, the smallest form of government where 12 members of the community decide the outcome. This is particularly true here in New Hampshire where juries do an excellent job of deciding and evaluating cases, including medical malpractice cases.

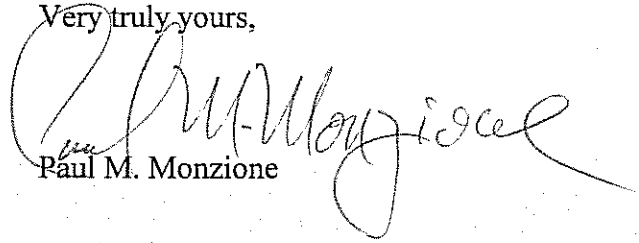
Given these facts, I am sure your constituents will appreciate that the bill before you acts only in the best interest of the insurance industry and against the interest of justice that each of us is guaranteed by our Constitution. For that reason, I ask you to oppose this proposed law. It is a complicated and lengthy piece of legislation that really will never be used by anyone who insists on being fully compensated under our law.

Page 3

Representative Stephen J. Schmidt

Should you wish to discuss this further, or if I can be of any additional assistance to you, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "P. Monzione". The signature is written in black ink and is positioned above the printed name.

Paul M. Monzione

PMM/bak