

1019 TROWBRIDGE ROAD  
EAST LANSING, MI 48823  
PHONE: 517.332.3800  
FAX: 517.332.4600

2127 SPRING ARBOR ROAD  
JACKSON, MI 49203  
PHONE: 517.787.7600  
FAX: 517.787.7605

395 S. SHORE DR.  
SUITE 205  
BATTLE CREEK, MI 49014  
PHONE: 269.963.3900  
FAX: 269.963.3901

105 S. JEFFERY AVENUE  
ITHACA, MI 48847  
PHONE: 989.875.8400  
FAX: 989.875.8401



[WWW.MIELDERLAW.COM](http://WWW.MIELDERLAW.COM)

DOUGLAS G. CHALGIAN  
CERTIFIED ELDER LAW ATTORNEY

AMY ROMBYER TRIPP  
ATTORNEY AT LAW

JOHN E. BOS  
OF COUNSEL

PHILLIP E. HARTER  
OF COUNSEL

DAVID L. SHALTZ  
OF COUNSEL

A. MICHELLE LANE  
ATTORNEY AT LAW  
Also Licensed in Ohio

RACHEL L. ZAPCZYNSKI  
ATTORNEY AT LAW

SALLY D. BABBITT  
ATTORNEY AT LAW

June 5, 2012

Senate Insurance Committee Hearing  
Senate Hearing Room, Boji Tower  
124 W. Allegan Street  
Lansing, MI 48933

RE: Testimony on behalf of the Elder Law Disability Rights Section  
of the State Bar of Michigan regarding Senate Bills 1115, 1116,  
1117 and 1118

Good afternoon Chairman Hune and Members of the Committee.

My name is Amy Tripp, and I am a past chair of the Elder Law and Disability Rights Section of the State Bar of Michigan. I am here today to relay the Section's opposition to Senate Bills 1115-1118.

First, let me say that the position of the Section does not represent the position of the State Bar of Michigan. We are an independent Section comprised of over 3,000 attorneys in Michigan who specialize in areas of law focusing on elder aged adults and persons with disabilities.

Upon review of these bills the Section has great concern and has taken the position to oppose them. This Section represents person's with disabilities and elderly and advocate for these persons to live in the least restrictive environment.

A person with disability may require additional care or assistance with a variety of tasks to maintain an independent environment. This assistance often includes household services that the individual can no longer perform as a result of their disability. A limit on these damages as proposed in SB 1115 will have a direct impact on these people's independence and will reduce housing options.

For those person's whose disabilities occurred as a result of negligence it is critical that funds be available to cover the costs of the increased need for

household services. More restrictions on litigation and lower limits on damages will result in lower quality of care and an increase in folks being served in nursing homes and therefore an increase in persons applying for and receiving Medicaid assistance. This bill appears to be shifting the burden to the State to pay for the care of person who was injured as a result of negligence. This bill is presented as having no fiscal impact however with out the recovery for damages those persons would have to rely on state provided services increasing the demand for MI Choice Waiver and Medicaid.

The limitations in these bills disproportionately burden those who are the most seriously injured by medical malpractice, and reduce them to second-class citizens. The overall effect [of these bills] is to relegate many of the victims of medical malpractice, who have been seriously injured through no fault of their own, to a life of poverty and reliance on government assistance, because they are prevented from receiving the compensation which will allow them to obtain the help they need to live as normal a life as possible, in spite of their injuries.

Why does SB 1117 matter to the elderly and persons with disabilities?

The elderly, who are the most vulnerable patients in our society, will be most affected by this bill. The elderly who live in nursing homes and other care facilities are treated in large part by unlicensed individuals, such as nursing assistants who bathe, feed and toilet patients, unit secretaries who take written orders and put them into a computer, or dietary staff who deliver trays of food to patients.

This bill would make it harder and more expensive for victims of nursing home abuse and neglect to seek justice when a resident of a nursing home is allowed to wander out into the winter cold and freeze to death because the home is understaffed; when an unlicensed sitter falls asleep on the job and a resident falls and breaks a hip; when an unlicensed aide delivers a full tray of regular food to a resident on a mechanical soft diet, and the resident chokes and dies.

This bill is an attempt to increase the costs of pursuing legitimate litigation and decreasing the recovery so fewer legitimate cases can be filed.

How this will affect the elderly:

The statutory limitations on damages in medical malpractice cases, which has to date only protected licensed health care professionals, will now apply when a nursing home resident is abused or neglected by an unlicensed nursing assistant.

The strict and cumbersome medical malpractice procedural requirements will apply to unlicensed workers, including a requirement that an abused and

neglected nursing home resident send a nursing home a detailed Notice of Intent to Sue six months before a lawsuit can ever be filed, a requirement that a nursing home resident retain and incur the expense of an expert to review records and sign an Affidavit of Merit certifying that abuse or neglect occurred, and a requirement that the nursing home resident again incurring expenses to prepare this expert to testify in the case.

This bill requires abused and neglected nursing home residents to the incur unnecessary expenses of hiring an "expert," who most often does not even have a high school diploma, to sign an affidavit and testify about actions that are within the common knowledge of a juror.

This bill requires that jurors be subjected to hours of expert testimony on simple acts such as explaining how a person takes a bath, goes to the bathroom, or delivers a tray of food.

This bill will create the need for a "lawsuit before the lawsuit." Michigan law requires a plaintiff in a medical malpractice lawsuit to identify a wrongdoer by name in a Notice of Intent to Sue and to obtain an Affidavit of Merit from someone in the same profession as the negligent individual before the medical malpractice lawsuit can ever be filed. The name and job title of the negligent person, however, may not be ascertainable from the records because unlicensed individuals usually do not make notes or even sign their names in medical records. As a result, plaintiffs will need to file a separate lawsuit before the medical malpractice lawsuit is filed, solely to find out the identity and / or job title of the negligent individual. Only after the plaintiff knows who was involved can the plaintiff complete a Notice of Intent and obtain an Affidavit of Merit from the appropriate unlicensed individual. Obviously, an "extra" lawsuit will not only increase litigation costs, but it will significantly burden the court system.

This bill shifts the burden of paying for the cost of care for abused and neglected nursing home residents from the wrongdoer to the taxpayers.

Thank you for giving me the time to speak today.

Amy R. Tripp  
On behalf of the Elder Law Disability Rights Section  
of the State Bar of Michigan