

**RECOMMENDATIONS PRESENTED BY  
CORPORATION COUNSEL MICHAEL A. CARDOZO  
TO THE MEDICAL MALPRACTICE WORK GROUP OF  
THE NEW YORK STATE MEDICAID REDESIGN TEAM**

**October 27, 2011**

## **I. REFORMING THE STATE TORT LAWS**

**Recommendation 1: Cap Pain And Suffering**

**Recommendation 2: Establish Schedules For Quantifying Non-Economic Damages**

**Recommendation 3: Medical Expense Threshold**

**Recommendation 4: Limit Joint And Several Liability For Economic Damages**

## **II. RECOMMENDATIONS TO COURTS AND JUDGES CONCERNING MEDICAL MALPRACTICE**

**Recommendation 5: Expand The Number Of Cases Adjudicated In Medical Malpractice Parts By Judges Trained And With Proficiency In Medical Malpractice**

**Recommendation 6: Expand The Use Of Court Assisted Mediation, As Early As Possible Following Commencement Of A Lawsuit, As A Means Of Resolving Medical Malpractice Cases Outside Of The Courtroom**

**Recommendation 7: Encourage Judges To Hold Frye Hearings And To Perform Their Gatekeeper Function More Vigorously In Determining Whether Scientific And Medical Testimony Is Sufficiently Reliable To Be Heard By A Jury**

### **III. OTHER PROPOSED STATUTORY CHANGES**

**Recommendation 8: Authorize The Appointment By Judges, Particularly In Cases Of High Exposure, Of Independent Experts To Calculate Future Medical Costs And The Cost Of Custodial Care, And To Analyze Certain Issues Related To Liability (Such As Standard Of Care And Causation)**

**Recommendation 9: Establish Rules That Would Encourage Doctors To Apologize To Patients Without The Risk Of The Apology Being Admissible In Court**

**Recommendation 10: Protect Statements By Doctors To Quality Assurance Committees From Discovery**

**Recommendation 11: Require An Affidavit Of Merit For Each Named Defendant**

**Recommendation 12: Require Each Party To Identify Its Experts By Name Within A Specified Period Following A Filing Of A Notice Of Issue, And To Produce The Expert For Deposition Should The Other Party So Request**