



The Maryland State Medical Society

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TO: The Honorable Joseph F. Vallario, Jr. Chairman
Members of the House Judiciary Committee

FROM: Joseph A. Schwartz, III
Pamela Metz Kasemeyer
J. Steven Wise

DATE: March 2, 2004

RE: **SUPPORT WITH AMENDMENT** – House Bill 1237 – *Health Care Malpractice – Mandatory Mediation or Other Alternative Dispute Resolution Process*

The Maryland State Medical Society (MedChi) which represents over 7,200 Maryland physicians and their patients supports with amendment House Bill 1237.

On its face, House Bill 1237 is unexceptional; it requires mandatory mediation which, as a practical matter, is already required in many circuit courts in Maryland. However, as drafted, House Bill 1237 requires this mediation at the wrong end of the case and will likely only increase fees paid to lawyers to defend medical malpractice cases. MedChi would suggest an amendment to require the mediation after the discovery process is complete and prior to trial.

If mediation is going to be required, it should be required at the end of the case, just before trial. The reason is that the normal discovery process in a civil lawsuit reveals, to both plaintiff and defendant, the weaknesses and the strengths of their respective cases. It is only after both parties are aware of the strengths and weaknesses of the case, that a mandatory mediation or alternative dispute resolution makes much sense. Otherwise, both sides approach the mediation with a perhaps too optimistic view of the merits of their respective cases.

There is nothing wrong with mandatory mediation or alternative dispute resolution procedures. They can be helpful in individual cases. MedChi does not believe that House Bill 1237 will materially assist the hemorrhaging medical malpractice market. The real answers lie in House Bill 287 and House Bill 1108.

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