

MedChi

The Maryland State Medical Society

1211 Cathedral Street
Baltimore, MD 21201-5516
410.539.0872
Fax: 410.547.0915

1.800.492.1056

www.medchi.org

TO: The Honorable Shane E. Pendergrass, Chair
Members, House Health and Government Operations Committee
The Honorable Erik L. Barron

FROM: Pam M. Kasemeyer
J. Steven Wise
Danna L. Kauffman

DATE: February 15, 2017

RE: **SUPPORT** – House Bill 628 – *Secretaries of Principle Departments – Supervision and Review of Decisions and Actions by Units Within Departments*

The Maryland State Medical Society (MedChi), which represents more than 7,000 Maryland physicians and their patients, **supports** House Bill 628.

This legislation stems from the Supreme Court’s 2015 decision in NC Board of Dental Examiners v. FTC, which has resulted in all states having to consider whether professional boards are “actively supervised” under antitrust law. In short, professional boards comprised of a majority from their profession can no longer render the final decision in cases involving potentially anti-competitive issues without running afoul of federal antitrust law; rather, someone other than the board must “supervise” these boards in such cases, and have the final authority.

MedChi has held true to two paramount concerns throughout, and House Bill 628 addresses both. First, MedChi is steadfast in its view that the Secretary of the Department of Health and Mental Hygiene (DHMH) should have no role in disciplinary proceedings. These antitrust issues may manifest themselves in disciplinary cases, and accordingly we oppose any “supervisory” role for the Secretary. The propensity for politics and public opinion to dictate the decision of a Secretary, rather than the facts and due process, is simply too great in disciplinary cases. Second, the need for review should be narrowly tailored to cover only those board actions which raise anti-competitive issues.

During the recent interim, the Attorney General’s Office coordinated a large workgroup to seek a resolution to this issue. For health occupations boards, a general consensus emerged that the Office of Administrative Hearings would review cases where potentially anti-competitive issues are present. This satisfies the “active supervision” requirement, avoids having the Secretary of DHMH involved in disciplinary cases, and through the formulation of proper regulations, will be narrowly tailored to address the Supreme Court decision.

Accordingly, MedChi supports this bill in its current form.

For more information call:

Pam M. Kasemeyer
J. Steven Wise
Danna L. Kauffman
410-244-7000