

MedChi

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TO: The Honorable Joseph F. Vallario, Chairman
Members, House Judiciary Committee
The Honorable Donald B. Elliott

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

DATE: March 10, 2010

RE: **SUPPORT** – House Bill 1157 – *Health Care Malpractice – Limitation on Noneconomic Damages*
SUPPORT – House Bill 1166 – *Health Care Malpractice – Awards and Judgments – Periodic Payments*

The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients, supports House Bill 1157 and House Bill 1166.

House Bill 1157 reduces the Maryland “cap” on noneconomic damages from its present level of \$680,000 to \$500,000. It leaves in place the yearly escalator in the amount of \$15,000.

House Bill 1166 provides for the periodic payment of certain noneconomic damages and certain future economic damages in a medical malpractice case. In a personal injury medical malpractice case, the portion of any award for judgment in excess of \$100,000, would be paid periodically to the claimant or plaintiff in the form of one or more annuities (pg. 2, lines 16-19).

Both of these bills are substantially similar to the proposals of former Governor Ehrlich made during the Special Session on Medical Malpractice convened in December of 2004. These proposals were not enacted at that time and many believed that such “tort reform” proposals were necessary to the long-term stability of the medical malpractice insurance market. MedChi supported these proposals in 2004 and supports them now.

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Opponents of malpractice reform argue that the events leading up the Special Session in 2004 were a “blip” on the screen. Those events were increasing claim “frequency” against doctors and hospitals and the increasing “severity” of the monetary settlements and awards. MedChi believes that the action of the General Assembly stopped the bleeding and that the year long public campaign by Governor Ehrlich over this issue raised public awareness of the problem and inevitably raised the public consciousness about the abuses of the litigation system.

We do know that, since the Special Session, claim “frequency” has dropped dramatically although claim “severity” continues to rise. According to Med Mutual, the claim frequency was 95 cases per 1,000 doctors insured in 2002 but is now (2009) only 73 cases per 1,000 doctors insured. This represents over a 20% decrease in claims frequency.

In spite of the encouraging trend on claim “frequency,” it remains clear that doctors pay substantially more for medical malpractice insurance than they did just a few years ago. Unfortunately, the medical malpractice insurance markets are very specialized with only a few companies participating. These markets tend to be volatile and such volatility always has predictable effects in the delivery of health services. Doctors practice defensive medicine thus contributing untold millions of dollars to the nation’s annual health cost.

House Bill 1157 and House Bill 1166 are incremental but important steps in controlling malpractice insurance costs. For example, House Bill 1157 imposes a cap on noneconomic damages of \$500,000 while other states have recently enacted \$250,000 caps (Texas and West Virginia in the last few years; California has had a \$250,000 cap since 1976). Maryland currently has one of the most generous caps in the nation

MedChi would urge a favorable report on House Bills 1157 and 1166.

For more information call:

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