

MedChi

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TO: The Honorable Brian E. Frosh, Chairman
Members, Senate Judicial Proceedings Committee
The Honorable C. Anthony Muse
The Honorable James Brochin

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

DATE: February 16, 2010

RE: **SUPPORT** – Senate Bill 358 – *Health Care Malpractice – Expression of Regret or Apology – Inadmissibility*

The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients supports Senate Bill 358.

In 2005, the General Assembly passed Maryland's Apology Law but, unfortunately, placed within it an "exception" which effectively made it useless. (See Baltimore Sun editorial dated February 8th, attached). The Apology Law is directed at oral and written communications between doctors and their patients after there has been a bad medical outcome. Such a law encourages the doctor to offer sympathy and information immediately to a patient by not allowing such communications from being yet used against the doctor in a later malpractice suit. Unfortunately, while Maryland's Apology Law encourages such "apologies," it allows their use in court if they are "an admission of liability or fault...." Since there is no bright line between an apology or "admission against interest," almost all doctors are instructed not to talk to their patients after a poor medical outcome. (See letter of Steven M. Berlin, M.D.).

MedChi believes that this is poor medicine and leads to more rather than less lawsuits. Over the years, the advantage of an effective apology law has been measured and the results are clear: full and unfettered communication between a doctor and his or her patient results in more satisfaction and less lawsuits and legal fees. During the last 8 years, the University of Michigan Health System has followed an immediate disclosure

The Honorable Brian E. Frosh, Chairman
Senate Bill 358
Page Two

and apology approach after a bad medical outcome. The Michigan results are impressive: lawsuits down 50%; legal fees cut by 2/3rds and insurance reserves for malpractice reduced from \$72 million to under \$20 million. The medical community has learned - in those states with effective apology laws – that open communication after a bad medical outcome, will further the doctor/patient relationship and result in resolution rather than in expensive litigation.

For a full discussion of apology laws throughout the United States and their impact go to: <http://www.medchi.org/law-and-advocacy/2010-legislative-hot-topics/apology-law>.

MedChi would urge this Committee to make Maryland's Apology Law an effective one rather than one that is on the books and unused.

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