

MedChi

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TO: The Honorable Joan Carter Conway, Chairman
Members, Senate Education, Health & Environmental Affairs Committee

FROM: Joseph A. Schwartz, III
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J. Steven Wise

DATE: February 24, 2011

RE: **SUPPORT** – Senate Bill 371 – *Health Occupations Boards – Discipline of Health Care Providers – Failure to Comply with Governor’s Order*

The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients, supports Senate Bill 371.

Senate Bill 371 amends a law originally enacted in 2004 to address the powers of the Governor in the event of a “catastrophic health emergency”. The powers given the Governor include the ability to quarantine individuals and order them to undergo certain medical treatment. *See* Public Safety §14-3A-03. Likewise, the Governor can order health care providers to participate in disease surveillance, treatment, and suppression efforts. While MedChi supports these powers, the bill concerns the sanction imposed upon providers who do not respond in accordance with the Governor’s order.

Under current law, any person who fails to comply with the Governor’s order is guilty of a misdemeanor and imprisonment up to one year, a fine not exceeding \$5,000, or both. For a member of the public, this sanction is appropriate and indeed there is no other constitutionally sufficient forum for such discipline. However, with respect to health care providers, it is MedChi’s view that the more appropriate penalty is for an individual to be sanctioned by the licensing board which oversees the profession; in the case of MedChi, the Board of Physicians. Senate Bill 371 establishes the Board as the proper sanctioning authority, rather than a judge who may not be familiar with the obligations of the profession that led the provider not to comply with the Governor’s order.

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By way of example, a physician may be contractually obligated to report to a particular hospital when a “catastrophic health emergency” arises. Yet, the Governor’s order may instruct that physician, due to her geographic location, to do otherwise. Under current law, the physician’s failure to do exactly as ordered by the Governor would subject her to a criminal penalty. The more appropriate forum for determining a sanction, in our view, would be the Board of Physicians where that person could explain the competing demands faced by the physician. If the physician’s reasons are unsupported or insufficient, Senate Bill 371 allows the Board to issue the proper sanction, including revocation of the physician’s license.

For these reasons, MedChi supports Senate Bill 371.

For more information call:

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