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TO: The Honorable Joseph F. Vallario, Jr., Chairman
Members, House Judiciary Committee
The Honorable Luiz Simmons

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

DATE: February 20, 2013

RE: **SUPPORT WITH AMENDMENT** – House Bill 821 – *Courts and Judicial Proceedings – Communications Between Patient and Psychiatrist or Licensed Psychologist – Exceptions to Privilege*

The Maryland State Medical Society (MedChi), which represents over 7,500 Maryland physicians and their patients, supports House Bill 821 with an amendment.

House Bill 821 proposes two exceptions to the current “psychiatric” privilege which exists in Maryland law. The first exception (page 3, lines 5 through 8) allows waiver of the privilege in a criminal proceeding against the patient where the patient has harassed or threatened a psychiatrist or psychologist and disclosure of information is necessary to prove the charge. This first exception is the equivalent in a criminal proceeding of the already existing exception (page 2, lines 29 through 31) which exists in a civil context where the patient is making a malpractice claim against the psychiatrist or psychologist. Creating an exception for a criminal proceeding is certainly appropriate.

The second exception (page 3, lines 9 through 11) is problematic. Some might call this the “Soprano” exception in that privilege is waived if the patient is “using the services” of the psychiatrist “...in furtherance of an ongoing or future crime or fraud”. MedChi does not understand how one could “use the services” to further a crime unless the mental health professional was a participant in the ongoing crime or fraud. What happens under this exception if a psychiatrist or psychologist comes to know that a patient is involved in an ongoing criminal enterprise? Is there now a requirement to report the patient to the police or answer police questions? What if the psychiatrist only suspects that the patient is involved in

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an ongoing criminal enterprise? Is a report or answering questions then required? What if the patient is an investment banker who is suffering from mental health problems because of risky and potentially criminal activities with respect to investments? Must the psychiatrist then answer police questions about this individual?

MedChi believes that the second exception is not only problematic from the wording point of view but also not wise from a policy point of view. This privilege is the keystone to effective mental health treatment and should be waived very sparingly.

Accordingly, MedChi would seek an amendment to House Bill 821 to strike, on page 3, lines 9 through 11. With this amendment, MedChi supports House Bill 821.

For more information call:

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