

MedChi

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TO: The Honorable Joseph F. Vallario, Jr., Chairman
Members, House Judiciary Committee
The Honorable Keiffer J. Mitchell, Jr.
The Honorable Kathleen M. Dumais

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

DATE: March 6, 2013

RE: **SUPPORT** – House Bill 1114 – *Health Care Malpractice – Awards and Judgments – Periodic Payments*
SUPPORT – House Bill 1265 – *Patient Safety Early Intervention Programs*
SUPPORT – House Bill 1310 – *Health Care Malpractice Claims – Definition of “Health Care Provider”*
SUPPORT – House Bill 1316 – *Postjudgment Interest – Medical Injury*

The Maryland State Medical Society (MedChi), which represents over 7,500 Maryland physicians and their patients, supports House Bills 1114, 1265, 1310 and 1316.

In the last 35 years, the General Assembly has paid special attention to medical injury cases as there have been three separate crises concerning medical malpractice insurance. The first occurred in the mid-1970s and resulted in the forerunner of the current Health Claims Arbitration System and the creation of the Medical Mutual Insurance Company in response to private insurance carriers refusing to continue malpractice coverage for doctors; the second occurred in the mid-1980s and resulted in the cap on non-economic damages; the third occurred in 2005 and resulted in a Special Session of the Legislature. In each instance, there were certain reforms to the laws relating to medical malpractice cases such as a limitation on expert witnesses. However, many substantive reforms were not enacted.

In 2005, the General Assembly was called into Special Session to deal with the third medical malpractice crisis in the preceding 35 years. The “solution” crafted by the 2005 Special Session was extremely modest tort reform and the passage of a 2% HMO tax with the proceeds being used to subsidize physicians’ insurance premiums. Perhaps because of the unusual amount of publicity around the issue, the number of malpractice cases being filed against doctors dropped significantly in the next few years. Since that time, malpractice

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premiums have remained steady but MedChi believes and history confirms that another malpractice crisis is somewhere on the horizon.

The four bills now before this Committee propose relatively modest changes to Maryland's malpractice laws as follows.

House Bill 1316 reduces the current legal rate of interest on a money judgment for a medical injury from 10% per annum to the greater of the bank prime rate or 3% per year. The current rate (10% per year), is at least 50 times what a Maryland bank or Maryland credit union is currently paying on savings deposits. In the last year, extraordinarily large awards have been reported against Maryland hospitals and medical malpractice awards tend to be substantial. A doctor or hospital faced with such an award would consider the annual 10% interest rate in determining whether to pursue an appeal or settle the case. The current legal rate of interest is so high that it may discourage a legitimate appeal. The current rate of 10% was established in 1980 when the prime rate was almost double the 10% figure. It makes no sense for the legal rate of interest to be so out-of-sync with the prevailing market interest rates.

House Bill 1310 changes the coverage of the Maryland laws relating to malpractice claims so as to include all "health care providers" who may be sued for medical malpractice. When the present malpractice system was set up, many of the current "health care providers" did not exist. For example, "physician assistants" and "nurse practitioners" were not yet a licensed provider group and, hence, they are not covered by the malpractice law. This may result in an anomaly where a malpractice suit is brought against both the physician and a physician assistant or nurse practitioner working with the doctor and the malpractice law applies to the physician and not to the physician assistant or nurse practitioner. Hence, the lawsuit against the physician must proceed through the arbitration system and is subject to the cap on non-economic damages and various other rules relating to medical malpractice cases in Maryland; the case against the physician assistant or nurse practitioner is not subject to any of these rules. The passage of House Bill 1310 would resolve this situation.

House Bill 1265 offers much needed improvement over Maryland's current "apology law." This legislation establishes formal a "Patient Safety Early Intervention Program" which would likely be a formal program established by a Maryland hospital (page 2, line 26- page 3, line 16). Such a program would provide for timely review of all "adverse events" immediate investigation, disclosure and improvements as well as mediation. Statements made in the course of such a program would not be admissible in court. While Maryland currently

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has an “apology” law, it is rarely, if ever, used because of its wording which allows certain statements to be admissible in court. No self-respecting defense lawyer would let his client hospital or physician engage in conversations under Maryland’s current apology law. House Bill 1265 would cure that problem by the creation of a formalized patient safety early intervention program.

House Bill 1114 provides for certain large verdicts to be paid over time in the form of an annuity. There are obvious financial advantages to the defendant if verdicts can be paid over a period of years particularly when the proof before the jury was that the injured party’s needs extended over a period of years. There is an advantage as well to the injured party in that he or she will have financial support for medical and economic damages over his or her lifetime.

MedChi would urge a favorable report on these bills.

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