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TO: The Honorable Brian E. Frosh, Chair
Members, Senate Judicial Proceedings Committee
The Honorable Victor Ramirez

FROM: Joseph A. Schwartz, III
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DATE: February 27, 2014

RE: **OPPOSE** – Senate Bill 789 – *Civil Actions – Noneconomic Damages – Catastrophic Injury*

The Maryland State Medical Society (MedChi), which represents more than 8,000 Maryland physicians and their patients, opposes Senate Bill 789.

Senate Bill 789 triples (3x) the Maryland cap on noneconomic damages for all cases arising after October 1, 2014 in which a court or an arbitration panel determines that there has been a “catastrophic” injury. The definitions of “catastrophic” injury are contained on page 2, lines 29 through page 3, line 27 of the bill. It is likely that most serious medical malpractice cases would fall within the definition of “catastrophic injury” and as such the effect of the bill will be to effectively eviscerate the Maryland cap on noneconomic damages.

The Maryland cap – which applies only to noneconomic damages – has been the one constant in the Maryland malpractice marketplace since the mid-1980’s. The cap was then set at \$350,000 but it is now \$740,000 and increases by \$15,000 on January 1st of each year. Twenty-one states have specific caps on noneconomic damages and 9 of the 21 have adopted a \$250,000 cap. One state, Virginia, has an overall cap on damages of \$2.1 million as of July 1, 2013. If Senate Bill 789 passes, Maryland’s cap on both “pain and suffering” will be more than the total cap that Virginia applies.

One of the reasons for a cap on noneconomic damages is that pain and suffering and emotional distress are inherently subjective and there is no method to accurately calculate or

measure how much money to pay someone for these items. On the other hand, loss of

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income from employment or the cost of nursing and custodial care for a seriously injured person or actual medical bills from hospitals, nursing homes and the like can be calculated and determined with some reasonable accuracy. These “economic loss” items have always been fully compensable under Maryland law.

Less than 10 years ago there was a Special Session of the Legislature because of a malpractice crisis which was forcing OB-GYNs to leave obstetrics practice and causing some doctors to leave Maryland or to retire early. As the result of legislative action in 2004, which included a reduction in the wrongful death cap, rates stabilized. Perhaps because of the wide publicity concerning the events leading up to and including the Special Session, claims dropped off almost immediately although they have returned to higher levels in recent years. Claim “severity” remains as high as it was then but because the number of claims is modestly down, the total payouts have been stable for the last number of years. It would not take much to tip the scale in the opposite direction.

In December of 2004 and January of 2005, this General Assembly steadied an extraordinarily bad situation and allowed, for one thing, Maryland OB doctors to go back to work. The passage of Senate Bill 789 would not only be contrary to the national trend, but almost surely will precipitate the next malpractice crisis in Maryland. MedChi would urge an unfavorable report on Senate Bill 789.

For more information call:

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