



Maryland  
CHAPTER

Maryland Chapter  
American College of  
Cardiology  
May 6, 2020

# COVID-19 State Law and Business Update for Maryland Physicians

Presented by:

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Chief Executive Officer

MedChi, The Maryland State Medical Society



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FOR INFORMATION PURPOSES ONLY - NOT LEGAL ADVICE



# Maryland Immunity Under COVID-19

# Maryland – Good Samaritan Law

## (Md. Code, § 5-603 of the Courts and Judicial Proceedings Article)

- According to the language of this act, immunity under this statute is only available to those individuals who provide assistance or medical care “without fee or other compensation.” The statute *does not* provide immunity to those individuals who provide assistance or medical care and receive a fee or other compensation for that assistance or medical care.
- If you find yourself in the role of a Good Samaritan during this time of crisis and you are not accepting a fee or other compensation, then the act may apply to you. Additionally, the immunity granted is qualified by providing that the acts are given “in a reasonably prudent manner” and the rendering of medical care or assistance must not be “grossly negligent.” Maryland courts have held that as this is a qualified immunity, the determination of whether the immunity applies will be determined by the trier of fact. *Artis v. Cyphers*, 100 Md. App. 633, 642 A. 2d 298, *aff’d*, 336 Md. 561, 649 A.2d 828 (1994).

# Federal – The CARES Act (Section 3215)

- Similar to Maryland’s Good Samaritan Law, Section 3215 of the CARES Act provides immunity to health care professionals who provide voluntary health care in relation to the COVID-19 crisis. Health care covered under this section includes (1) the diagnosis of COVID-19, (2) the prevention of COVID-19, (3) the treatment of COVID-19, (4) the assessment of the health of a human being related to an actual or suspected case of COVID-19, and (5) the care of the health of a human being related to an actual or suspected case of COVID-19.
- Importantly, this immunity only applies if the health care provider is providing care within the scope of the health care provider’s license, and the health care provider is acting in good faith. Immunity *will not* apply if (1) a health care provider caused harm by an act that is “willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual[;]” (2) a health care provider is under the influence; or (3) a health care provider accepts payment for services rendered to an individual. Lastly, **this immunity provision only provides immunity for actions from March 27, 2020, to the end of the duration of the declared federal public health emergency.**

# Maryland – Public Safety Immunity Act (Maryland Code, § 14-3A-01(b) of the Public Safety Article)

- This statute provides a health care provider with immunity from civil liability if that health care provider acts with “good faith” and under “a catastrophic health emergency proclamation.” Maryland Governor Hogan issued such a proclamation pursuant to Maryland Code, § 14-3A-01(b) of the Public Safety Article on March 5, 2020. To fall under the immunity protection of this Act, certain conditions apply:
- If you are providing normal/routine care for a non-COVID-19 patient, then the immunity of this Act would not apply because that care has no relation to the “catastrophic health emergency proclamation” of Governor Hogan. Accordingly, if a patient had COVID-19, but was being treated for a non-COVID-19 condition, this immunity also may not apply.
- The immunity *would* apply if the health care provider was rendering care within the scope of the “Governor’s orders[,]” and those acts are to “save lives during a public health emergency.” The provider would need to strictly follow the Order of the Governor or any Department of Health (“DOH”) criteria (or other State established criteria) to obtain the immunity





April 16, 2020

The Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland  
100 State Circle  
Annapolis, Maryland 21401

Re: Legal Protections for Health Care Practitioners

Dear Governor Hogan,

We sincerely thank you for your unwavering support for our health care system and its physicians and other health care workers who are making tremendous sacrifices as part of the State's emergency response to the novel coronavirus (COVID-19) pandemic. The pandemic is certain to be a critical test of

all of us, and your additional support during this great time of need is especially appreciated. Accordingly, we are writing to request you issue an Order to further afford appropriate legal protections.

Under your leadership, the State of Maryland has made great strides in its emergency response to COVID-19, including an Executive Order dated March 16 providing interstate reciprocity of licenses, reinstating inactive practitioners, expanding scope of practice, and postponing elective procedures. Following these important steps, we see an additional opportunity to facilitate the expedient provision of health care in the State. This proposal builds on and clarifies current law, which provides that "[a] health care practitioner is immune from civil or criminal liability if the health care practitioner acts in good faith and under a catastrophic health emergency proclamation."<sup>1</sup>

Despite our collective good faith and exhaustive efforts to meet the needs of our state and community, facing environmental factors that are outside of our control, we have seen a marked increase among the legal community discussing and advertising the possibility of tort litigation to take advantage of the circumstances of a national COVID-19 pandemic crisis.

Accordingly, we propose that health care facilities, health carriers, health care professionals and physician group practices be immune from any liability or claim for any injury, death or loss alleged to have resulted from any acts or omission in providing, arranging, delaying or withholding care during and in the immediate aftermath of the current COVID-19 state of emergency, absent a compelling showing of wanton misconduct. We further propose that the applicable standard of care applied to determine the presence of wanton misconduct incorporates all the circumstances of the state of emergency in existence at the time the care in question was provided, arranged for, delayed or withheld.

While the State is creating a framework to guide difficult care decisions and increase the availability of medical resources, practitioners need assurance they will not later be judged or sued when abiding by this framework, or when making related care decisions based on their best judgment and determination in the face of then existing conditions. In this time of crisis, care practitioners must be able to observe, evaluate and respond to rapidly changing conditions and events; the long-term threat of lawsuits would burden and slow these decisions, threatening greater loss of life throughout the state.

Other states have expanded civil or criminal immunity through executive order. New Jersey has provided civil immunity for health care practitioners "as a result of the individual's acts or omissions undertaken in good faith, whether or not within the scope of the licensee's practice, in the course of providing healthcare services in support of the State's COVID-19 response, whether or not such immunity is otherwise available under current law."<sup>2</sup> In Michigan, the Governor issued an executive order that provides immunity to "any licensed health care professional or designated health care facility that provides medical services in support of...the COVID-19 pandemic...regardless of how or under what circumstances or by what cause those injuries are sustained, unless...caused by...gross negligence."<sup>3</sup> These grants of immunity recognize the strain on health care practitioner resources and protect them from the difficult decisions they will need to make.

<sup>1</sup> Section 14-3A-06 of the Public Safety Article, Annotated Code of Maryland (2020).

<sup>2</sup> State of New Jersey, Executive Order No. 112, available at <https://nj.gov/infobank/ea/056murphy/pdf/EO-112.pdf>

<sup>3</sup> State of Michigan, Executive Order No. 2020-30, available at [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-523481--00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523481--00.html).

For the foregoing reasons, we respectfully request your continued support of health care practitioners, carriers, and facilities by issuing an Order that will afford them with the legal protections necessary to fully focus on treating patients and containing this pandemic rather than focusing on lawsuit mitigation. We have proposed some language for an Order below.

Your leadership and service to our State during these difficult times are greatly appreciated.

Sincerely,

The Maryland State Medical Society (MedChi)  
Kaiser Permanente

CareFirst  
Maryland Hospital Association (MHA)  
Maryland Academy of Family Physicians (MDAFA)  
Maryland Chapter of the American Academy of Pediatrics (MDAAP)  
Mid-Atlantic Association of Community Health Centers (MAAHC)  
Maryland District of Columbia Society of Clinical Oncology (MDCSCO)  
The League of Life and Health Insurers of Maryland  
Maryland Society of Eye Physicians & Surgeons (MSEPS)  
Maryland Chapter of the American College of Emergency Physicians (MDACEP)  
Maryland Section of the American College of Obstetricians and Gynecologists (MDACOG)  
Maryland Clinical Social Work Coalition (MDCSWC)  
Mid-Atlantic Society for Post-Acute and Long-Term Care Medicine (MAMDA)  
Maryland Dermatologic Society (MDS)  
US Acute Care Solutions  
Arthritis and Rheumatism Associates, P.C.  
Maryland Patient Care and Access Coalition (MPCAC)  
MedNax Health Solutions Partner  
US Anesthesia Partners - Maryland  
Maryland Society of Anesthesiologists  
Associates in Radiation Medicine, PC (ARM)  
Maryland Radiological Society (MRS)  
Maryland Orthopedic Association (MOA)  
Baltimore City Medical Society (BCMS)  
Montgomery County Medical Society (MCMMS)  
Baltimore County Medical Association (BCMA)  
Prince George's County Medical Society (PGCMS)  
Anne Arundel & Howard County Medical Society (AAHCMS)  
Harford County Medical Association (HCMA)  
Allegany County Medical Society  
Garrett County Medical Society  
Washington County Medical Society

Wicomico County Medical Society  
Calvert County Medical Society  
Charles County Medical Society  
Frederick County Medical Society  
St. Mary's County Medical Society  
Kent County Medical Society  
Dorchester County Medical Society  
American Property Casualty Insurance Association

Proposed Language:

Health care facilities, health carriers, health care professionals, and physician group practices shall be immune from any administrative sanction or criminal or civil liability for any injury, death, or loss alleged to have resulted from any acts or omissions in providing, arranging, delaying, or withholding care during the current COVID-19 state of emergency, absent a compelling showing of wanton misconduct as measured by a standard of care that incorporates all of the circumstances of the emergency.

- Governor Executive Orders
- General Assembly Actions Related to COVID-19



# Governor Hogan Issues Mask Order

## #MasksOnMaryland

Governor Hogan has issued an executive order that **Marylanders should use masks and cloth face coverings in retail spaces and public transportation** effective Saturday, April 18 at 7 a.m.



**MAKE YOUR OWN CLOTH FACE COVERING**  
You can make masks easily at home from a bandana and hair ties, a t-shirt, or a scarf. **Please don't buy masks intended for health care professionals.**



**ENSURE THE RIGHT FIT**  
Your cloth mask should fit snugly but comfortably against your face and cover your nose and mouth. It should not require frequent adjustments: **as always, avoid touching your face as much as possible.**



**KEEP IT CLEAN**  
Don't touch the front of your mask, and don't touch your face while removing it. **Wash your hands after taking it off and be sure to launder it frequently.**



**CONTINUE TO KEEP YOUR DISTANCE**  
Masks can help slow the spread of the virus, but it's still essential to **practice social distancing and stay home unless it's absolutely necessary to leave.**

Cloth face coverings should not be placed on young children under age 2, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance.

FOR HEALTH RESOURCES, VISIT [CORONAVIRUS.MARYLAND.GOV](https://coronavirus.maryland.gov).





United States Department of State  
Washington, D.C. 20520

March 30, 2020

## NOTICE

### Maryland "Stay Home" Order

To further combat the spread of COVID-19, the Governor of Maryland, Larry Hogan, has issued an executive order directing all residents to stay at residences except:

- to conduct or participate in Essential Activities (defined below);
- staff and owners of certain designated businesses and organizations that are not required to close pursuant to the order may travel:
  - between their Homes and those businesses and organizations; and
  - to and from customers for the purpose of delivering goods or performing services; and
- staff and owners of non-essential businesses may travel between their Homes and those non-essential businesses for the purpose of engaging in Minimal Operations; and to and from customers for the purpose of delivering goods.

This Order remains effective until after the Governor's termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.

For purposes of the order, "Essential Activities" means:

- obtaining necessary supplies or services for one's self, family, household members, pets, or livestock, including, without limitation: groceries, supplies for household consumption or use, supplies and equipment needed to work from home, laundry, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence;
- engaging in activities essential for the health and safety of one's self, family, household members, pets, or livestock, including such things as seeking

-2-

medical or behavior health or emergency services, and obtaining medication or medical supplies;

- caring for a family member, friend, pet, or livestock in another household or location, including, without limitation, transporting a family member, friend, pet, or livestock animal for essential health and safety activities, and to obtain necessary supplies and services;
- traveling to and from an educational institution for purposes of receiving meals or instructional materials for distance learning;
- engaging in outdoor exercise activities, such as walking, hiking, running, or biking, but only in compliance with specific rules and applicable social distancing guidance published by the U.S. Centers for Disease Control and Prevention ("CDC") and the Maryland Department of Health ("MDH");
- travel required by a law enforcement officer or court order; or
- traveling to and from a **federal**, State, or local government building for a necessary purpose. **(This includes traveling to and from a foreign mission to perform essential foreign government services.)**

Governor Hogan has prohibited gatherings in Maryland larger than 10 persons. This includes:

- social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events of more than 10 people are prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers; and
- planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.

A copy of the order is available at: <https://t.co/U4DOZlvsTW?amp=1>.

#### How does this impact foreign missions and their members?

Foreign missions may continue to perform essential government operations in Maryland. However, all foreign missions are expected to adopt strategies aimed at mitigating the spread of COVID-19, such as maximizing opportunities for their members to work from home ("telework"), applying social distancing of at least six feet, and avoiding local travel unless required for purposes of protecting health, safety, and protection of property.

When not performing those functions, foreign mission personnel and their dependents are expected to fully comply with the requirements of the Governor's order, as well as any other applicable orders issued by local or municipal authorities.

The Department appreciates your patience and understanding as local authorities begin to implement these new restrictions.

#### Questions or Issues

Inquiries concerning the impacts of COVID-19 and the associated responsive effort on the operation of foreign missions in the United States should be transmitted by electronic mail to [OFM-EmergencyMgt@state.gov](mailto:OFM-EmergencyMgt@state.gov).

#### Resources

- COVID-19 in Maryland: <https://governor.maryland.gov/coronavirus/>
- CDC's Coronavirus Website: <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>
- CDC's Interim Guidance for Business and Employers: <https://www.cdc.gov/coronavirus/2019-nCoV/community/guidance-business-response.html>
- Compilation of circular diplomatic notes and notices released by OFM concerning COVID-19: <https://www.state.gov/circular-notes-and-notices-covid-19/>
- Follow OFM on social media: Facebook.com/ofmdc and Twitter @OFM\_Ambassador

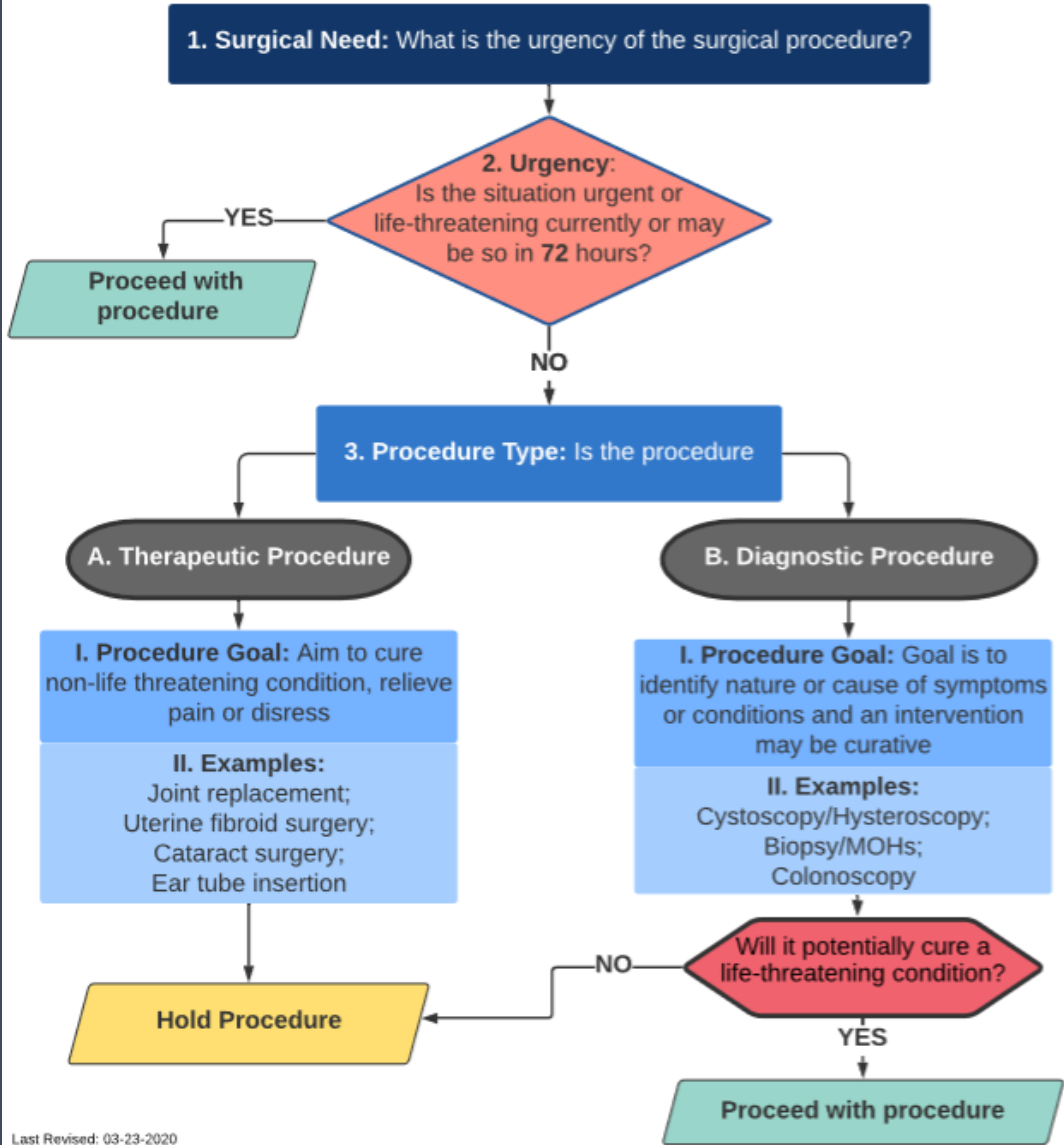
# Governor Hogan Issues Stay Home Order

# Governor Hogan Outlined his Roadmap to Recovery for the State

Here is a copy of the plan:

- <https://governor.maryland.gov/recovery/>
- Here is a summary of what he said:
- The State will continue to look for a 14-day downward trend in key numbers before loosening of restrictions will move forward: 1) the # of hospitalizations, and 2) the # of ICU admissions, and 3) the # of deaths. A one day increase in any number does not require that the 14 day count start over; rather, it is the trend the Governor will focus on.
- These numbers continue to rise at present, though Dr. Inglesby of JHU also said other numbers have begun to plateau.
- The Governor outlined “Building Blocks” that will be the foundation for the 3 Stages of Re-opening set out below:
  - Expanded Testing
  - Increased Hospital Surge Capacity
  - Adequate PPE Supply
  - Increased Contact Tracing
- The 3 Stages of reopening are below. These will occur gradually and require that the Building Blocks above remain in place:
  - Stage 1: Lifting Stay @ Home Order; reopen some small businesses; allow outdoor recreation and other low risk activities; elective surgeries allowed; more flexibility in non-surge areas
  - Stage 2: Increase limit on social gathering; bars and restaurants reopening with safety restrictions; non-essential workers begin to return
  - Stage 3: Large gatherings allowed; high capacity bars and restaurants reopening; family visits to nursing homes allowed.
- The Governor will rely on input from various industries on the details of how various industries will reopen.

COVID-19 - Surgical Procedures Guidelines



# Elective Procedures

# Economic Opportunities For Your Practice

- CARES Act
  - Stimulus payment one & two
- Payroll Protection Program
- Economic Injury Disaster Loan (EIDL) and GRANT
- State Programs
- County Programs
- Telehealth Grants



U.S. Small Business  
Administration



# MedChi Resources

<https://www.medchi.org/Your-Resource/Public-Health/Coronavirus-Resource-Center>

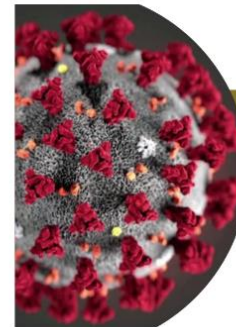
## IMPORTANT INFORMATION ABOUT COVID TESTING

- Not everyone needs a test. Testing is appropriate for those who are at highest risk for developing severe COVID-19 disease.
  - Currently, COVID-19 testing is not widely available.
- Mildly ill patients should be encouraged to stay home and contact their healthcare provider by phone for guidance about clinical management.

Business Help Resources	Clinical Guidance Resources	Coronavirus FAQ's	COVID Email Archives	CRISP Resources
Human Resources Issues	Maryland Resources	Maryland Testing Sites	National Resources	Telehealth Resources

## Coronavirus Resource Center

*Last Updated 4/30/2020*



CORONAVIRUS RESOURCE CENTER

RESOURCES FOR PHYSICIANS AND PATIENTS



The Maryland State Medical Society



Your Advocate.

Your Resource.

Your Profession.

## COVID-19 UPDATE FROM MEDCHI

April 28, 2020

Dear MedChi Members and Maryland Physicians:

Last week, we shared with you the latest updates from the Department of Health and Human Services (HHS) on the second round of disbursements for the [CARES Act Provider Relief Fund](#). We also shared some helpful [FAQs on the HHS General Distribution Portal](#).

Today, we want to share more details and resources to support you in navigating the complexities of accessing these relief funds:

- Although some physicians will automatically be sent an advance payment based off the revenue data they submit in CMS cost reports, **those physicians without adequate cost report data on file will need to submit their revenue information to the [General Distribution Portal](#)**. (If you are unsure if you need to complete the portal, call the CARES Provider Relief line at [1-866-569-3522](#).)
- This portal should be accessed and completed by anyone who lost revenue in March and/or can estimate lost revenue for April. You will need your Tax Identification Number (TIN) to access the portal.
- These resources can help you navigate the portal:
  - The American Medical Association (AMA) has developed [guidance on the fund portal](#).
  - This [fact sheet on the general distribution](#) might be helpful as well.
  - This [slideshow](#) can guide you through the process.
- You should also be aware that a portion of the Provider Relief Fund will be used to reimburse healthcare providers, at Medicare rates, [for COVID-related treatment of the uninsured](#).

**MEDCHI IS YOUR RESOURCE** - We are here to help you work through the complexities of accessing these funds. Please don't hesitate to reach out with specific questions. We will continue to develop and share resources based on your FAQs and requests.

Thank you for all that you do as physicians, healers, and heroes.

Gene Ransom  
MedChi CEO  
[gransom@medchi.org](mailto:gransom@medchi.org)

# Keeping You Informed



The Maryland State Medical Society



Your Advocate.

Your Resource.

Your Profession.

## COVID-19 UPDATE FROM MEDCHI

April 30, 2020

Dear MedChi Members and Maryland Physicians:

I hope you're doing well. Here's what we want to share with you today:

### UPCOMING VIRTUAL EVENTS

- Register here for the Maryland Department of Health all-physician call [tomorrow, Friday, May 1, at 12:00 noon](#).
- CMS will hold their weekly Lessons from the Front Lines call [tomorrow, Friday, May 1, 12:30-2:00 pm](#).

### THE LATEST NEWS, INFORMATION, AND RESOURCES

- Ron Elfenbein, MD, an emergency medicine physician and MedChi member in Gambrills, created a fantastic [YouTube video to answer kids' questions about COVID-19](#). We encourage you to share this resource.
- HHS has provided a summary of how they will provide [payments to physicians and facilities for COVID-19 testing and treatment for uninsured individuals](#).
- The AMA has developed a [guide to COVID-19 prior authorization policies](#).
- MedChi has joined a coalition of medical associations and independent practices [asking HHS and CMS to clarify that audio-only health services will satisfy risk adjustment requirements](#).

### AS ALWAYS, MEDCHI IS YOUR RESOURCE

- Visit MedChi's [COVID-19 Resource Page](#) regularly for more information and resources as we work through this crisis together.
- MedChi and the Center for a Healthy Maryland want you to know that the [Maryland Physician Health Program \(MPHP\)](#) is here to help if the stress of dealing with the pandemic becomes too overwhelming. We are here for all physicians, so if you or a colleague need support, please call [410.962.5580](#) or [800.992.7010](#), option 3. The staff is working remotely so please leave a message and you will receive a call back.

Thank you for all that you do as physicians, healers, and heroes.

Gene Ransom  
MedChi CEO  
[gransom@medchi.org](mailto:gransom@medchi.org)

- Thank You -



[gransom@medchi.org](mailto:gransom@medchi.org)

Please visit us on the web, at [Medchi.org](http://Medchi.org)

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MedChi, The Maryland State Medical Society