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Senate Judicial Proceedings Committee
March 11, 2026
Senate Bill 871 – *Civil Actions – Punitive Damage Awards – Surcharge*
POSITION: OPPOSE

On behalf of MedChi, The Maryland State Medical Society and the Maryland Chapter of the American College of Emergency Physicians (MDACEP), we submit this letter of **opposition** for Senate Bill 871.

This bill would both lower the current standard for an award of punitive damages and impose a 50% surcharge on any such award, with that surcharge being paid not to the plaintiff or plaintiffs, but to the State of Maryland. MedChi and MDACEP strongly oppose this legislation for the following reasons.

The current standard for an award of punitive damages in Maryland remains “actual malice”, as set forth by the then Maryland Court of Appeals in Owens-Illinois vs. Zenobia, 325 Md. 420 (1992). Senate Bill 871 would expressly abrogate the holding in that case and lower the standard to one of “gross negligence”, which is defined as “a pattern of repeated misconduct”, or “acts or omissions that create a high degree of risk of harm to others”, among other things. Should this legislation pass, nearly every medical malpractice case would expose the defendant to punitive damages, with the plaintiff’s attorney arguing that the defendant’s act constituted an “act or omission that created a high degree of risk” to the patient. If this legislation is adopted, punitive damages likely would be regularly awarded along with economic and noneconomic damages.

The surcharge on top of the punitive damage award is rife with legal problems. Under the bill, the State of Maryland could receive a 50% surcharge on top of any punitive damage award. In short, the State would ostensibly be collecting damages on behalf of people who are “strangers to the litigation,” a practice held to be an unconstitutional taking in Philip Morris USA v. Williams, 549 U.S. 346 (2007). The surcharge is then allocated to the Blueprint for Maryland’s Future Fund, a purpose that is almost assuredly unrelated to the harm caused by the defendant in the underlying case. This strains credulity and should be rejected.

For these reasons and others, MedChi and MDACEP oppose Senate Bill 871.

For more information call:

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