

MEDCHI, THE MARYLAND STATE MEDICAL SOCIETY
HOUSE OF DELEGATES

Resolution 19-19

INTRODUCED BY: MedChi Board of Trustees

SUBJECT: Board Immunity

Whereas, the Maryland Board of Physicians (“Board”) is the administrative agency responsible for the regulation of physicians and allied health professions in the state; and

Whereas, the Board is responsible for conducting investigations of physicians and allied health professionals based upon complaints filed with the board; and

Whereas, during the course of these investigations, Board members, Board staff, and administrative prosecutors obtain access to protected patient data and personal information related to physicians and allied health professionals; and

Whereas, a Maryland statute provides that so long as the Board members, Board staff, and administrative prosecutors do not act with malice, they are immune from civil liability when conducting investigations and in prosecuting physicians and allied health professionals in administrative disciplinary proceedings; and

Whereas, MedChi recognizes that providing a limited immunity to Board members for negligent acts is necessary to ensure that physicians are willing to serve on the board; and

Whereas, a recent decision of the Maryland Court of Special Appeals (*Geier et.al. v. Md Board of Physicians*, 211 a.3d 543 (2019)) contradicted the Maryland statute and instead held that Board members, Board staff, and administrative prosecutors are entitled to *absolute* immunity, even when they have engaged in malicious conduct; and

Whereas, providing absolute immunity to Board members, Board staff, and administrative prosecutors does not provide physicians or allied health professionals with proper recourse if there is malicious conduct in the course of an investigation or prosecution and the physician or allied health professional suffers damages; therefore be it

Resolved, that if the decision of the Court of Special Appeals in the *Geier* case is not appealed or if it is affirmed on appeal by the Maryland Court of Appeals, MedChi shall introduce legislation providing limited immunity from civil liability for negligent acts to Board members, Board staff, and administrative prosecutors, but does not provide immunity from malicious conduct during an investigation or prosecution.

As adopted by the House of Delegates at its meeting on November 2, 2019.