

MedChi

The Maryland State Medical Society

1211 Cathedral Street
Baltimore, MD 21201-5516
410.539.0871
Fax: 410.547.0915

1.800.492.1056

www.medchi.org

TO: The Honorable Brian E. Frosh, Chairman
Members, Senate Judicial Proceedings Committee
The Honorable Lisa Gladden

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

DATE: March 9, 2010

RE: **OPPOSE** – Senate Bill 769 – *Health Care Malpractice – Noneconomic Damages*

The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients, opposes Senate Bill 769.

Senate Bill 769 undoes the principal reform from the 2004 Special Session on Medical Malpractice which became effective January 2005. Specifically, the bill increases the “cap” on noneconomic damages in wrongful death cases from its present level (a maximum of 125% of the monetary cap) to the level which was in place prior to 2005 (a maximum of 250% of the monetary cap). Additionally, it increases the “cap” from its present level of \$680,000 to \$740,000. Senate Bill 769 is going in the absolute wrong direction, particularly when other states, including neighboring West Virginia, have recently enacted a \$250,000 cap. Finally, the wording of Senate Bill 769 (page 2, ll. 29-32) appears to create multiple caps in certain personal injury cases.

It is well known to the health committees of the General Assembly that there is a “shortage” of treating physicians in Maryland. It appears that the principal reason for the present and growing shortage of physicians is the combination of low reimbursement rates and high practice expenses, particularly the cost of malpractice insurance. Indeed, primary care doctors have an extraordinarily high malpractice insurance cost as a percentage of their practice income. While the 2004-2005 medical malpractice debate

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focused on the cost of OB/GYN insurance, primary care doctors with a lower premium were in just as dire straights as the “OB/GYN” because of low reimbursement rates.

The Maryland Health Care commission has reported that Maryland physicians are in the lowest 25% in the nation with respect to reimbursement. Older Maryland physicians are retiring earlier; younger physicians, even those trained in Maryland, are starting practice elsewhere. Indeed, the two “growth” states with respect to physicians are Texas and West Virginia which have recently enacted substantive malpractice reform including a \$250,000 “cap” on noneconomic damages. The \$250,000 “cap” has been law in California since 1976.

The effectiveness of “caps” in restraining malpractice costs is well documented. See a report published by the American Medical Association entitled: “Policy Research Perspectives – The Impact of Liability Pressure and Caps on Damages on the Healthcare Market: An Update of Recent Literature” at:

<http://www.ama-assn.org/ama1/pub/upload/mm/363/prp2007-1.pdf>.

Since the Maryland malpractice “cap” was stabilized in January of 2005, Maryland malpractice rates have also stabilized. This is surely a positive development and it is a reform that should be continued.

MedChi would respectfully urge an unfavorable report on Senate Bill 769.

For more information call:

Joseph A. Schwartz, III
Pamela Metz Kasemeyer
J. Steven Wise
410-269-1618