

# 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 Joseph F. Vallario, Jr., Chairman  
Members, House Judiciary Committee  
The Honorable Benjamin F. Kramer

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

DATE: March 2, 2011

RE: **SUPPORT** – House Bill 1129 – *Maryland Contributory Negligence Act*

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The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients, supports House Bill 1129.

The purpose of House Bill 1129 is to stop the Maryland judiciary from changing Maryland's rule on "contributory negligence" by judicial fiat or through the activity of the Rules Committee. The Court of Appeals has historically maintained that – if the doctrine of contributory negligence is to be changed – it is a decision to be made by the General Assembly and not by judicial opinion. "In the final analysis, whether to abandon the doctrine of contributory negligence in favor of comparative negligence involves fundamental and basic public policy considerations properly to be addressed by the legislature." Harrison v. Montgomery County Bd. of Education, 295 Md. 442, 463 (1983).

Recently, however, it appears that the Chief Judge has directed the Rules Committee to examine the Maryland doctrine of contributory negligence. The Rules Committee will consider the doctrine at a scheduled meeting in late March.

Today's hearing will likely involve the "usual suspects" lined up on the usual sides – the business and defense interests in favor of the bill with plaintiff injury lawyers against the bill. However, in MedChi's views, this is **NOT** a "contributory negligence" bill. Rather, it is a bill related to the separation of powers which seeks to establish that it is the General Assembly (not the Court of Appeals) which decides on the principles of Maryland's tort law.

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Imagine a slightly different scenario; the Rules Committee decides to change the doctrine of “joint and several liability” which has historically been the province of the General Assembly. Would not the plaintiff’s bar then file such as House Bill 1129 to preserve the General Assembly’s prerogative? Perhaps, the defense community would oppose such a bill for the same reasons that House Bill 1129 is being opposed.

MedChi believes that the bottom line is this: The passage of House Bill 1129 will ensure that significant and radical changes in the law are a product of legislative determination and not judicial fiat. This same principle should be applicable to doctrines which favor plaintiffs (joint and several liability) as it is for doctrines which favor defendants (contributory negligence). MedChi would ask for a favorable report on House Bill 1129.

**For more information call:**

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