

MedChi

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TO: The Honorable Peter A. Hammen, Chairman
Members, House Health & Government Operations Committee

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

DATE: February 29, 2012

RE: **SUPPORT WITH AMENDMENTS** – House Bill 824 – *State Board of Physicians and Allied Health Advisory Committees – Sunset Extension and Program Evaluations*

The Maryland State Medical Society (MedChi), which represents over 7,600 Maryland physicians and their patients, supports House Bill 824 with amendments.

House Bill 824 is the result of the 2011 Sunset Review of the Board of Physicians. The legislation affects a range of subjects within the statutory framework of the Medical Practice Act, and MedChi is generally supportive of the bill but has specific concerns with the areas enumerated below.

First, MedChi would request that the language urging the Board to hire an outside consultant to review the Board's operations, as set forth on page 16 of Senate Bill 629 on the same subject, be amended into this bill. MedChi has endorsed this hiring and believes that with the numerous legislative reviews that have occurred over the last decade, far more than most agencies have undergone, it is time for a fresh set of eyes to evaluate the Board's operations, particularly its disciplinary functions. Indeed, MedChi is very concerned about the due process protections afforded to physicians during the disciplinary process and looks forward to addressing those in legislation next year, following the review of the outside consultant.

1. Search Warrants (p. 4) – House Bill 824 provides a process for the Board to obtain a search warrant from a Judge to enter the premises of a person who is reasonably believed to be practicing medicine without a license. This clarifies the Board's authority in this regard. MedChi supports this provision.

2. Failed Examination Waiver (p. 6) – House Bill 824 allows a person to waive out of the examination requirement of the law. Current law requires a person who has failed the medical examination 3 or more times to submit evidence of completing 1 additional year of clinical training. However, the law makes no mention of waiving the examination requirement for that person. *See* Sunset Review at p. 80. Yet, current regulations permit such a waiver, raising the question of whether there is any statutory authority for these regulations. House Bill 824 makes an effort to codify the regulations, but MedChi believes that the bill needs some significant amendments to remain consistent with those regulations. More importantly, MedChi is concerned that waiving examination requirements for someone who suffers from a serious “emotional or mental condition” might result in a person being allowed to practice medicine who may not be fit to do so.
3. Case Resolution Conference (p. 6) – House Bill 824 codifies the opportunity for a physician involved in a disciplinary proceeding to appear before the Board during the Case Resolution Conference phase of the proceeding. This is an effort to resolve cases, if possible, before they proceed further to formal charges, and MedChi supports its inclusion in the bill.
4. Profile Information (p. 6) – The bill also requires a disclaimer on a physician’s profile stating that charges filed against the physician do not indicate a finding of guilt, and MedChi supports that provision. However, MedChi believes that on page 6, line 27, the words “a summary of charges filed against the licensee that includes a copy of”, and on page 8 “information relating to”, on line 1, should be deleted. This language allows for information other than the actual charges to be posted on the profile. Because a case is pending and a determination not yet made, the Board should be restricted to posting only the charging document and not other information or evidence which may or may not be admitted in the disciplinary proceeding. Striking this language will still afford the public knowledge of the pending case, but also protects the physician from the posting of other, unnecessary information.
5. Fines for Reporting of Court Judgments (p. 11) – The bill appears to allow the Board to fine the judiciary for the failure to report a conviction or pleading of *nolo contendere* by a physician for a crime involving moral turpitude. MedChi believes this provision should be deleted, as it raises constitutional questions about whether the Board, as

part of the Executive Branch, has the power to fine the judicial branch of government. Moreover, it is not clear if the fine is issued to the judiciary or the physician. If it is

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intended to be the latter, the physician should not be fined for something that is the responsibility of the court system. For these reasons, this provision should be deleted.

As set forth above, MedChi supports House Bill 824 with amendments.

For more information call:

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