

MedChi

The Maryland State Medical Society

1211 Cathedral Street
Baltimore, MD 21201-5516
410.539.0872
Fax: 410.547.0915

1.800.492.1056

www.medchi.org

TO: The Honorable Peter A. Hammen, Chairman
Members, House Health & Government Affairs Committee
The Honorable Joan Carter Conway

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

DATE: March 28, 2012

RE: **SUPPORT WITH AMENDMENTS** – Senate Bill 629 – *State Board of Physicians – Sunset Extension and Program Evaluation*

The Maryland State Medical Society (MedChi), which represents over 7,600 Maryland physicians and their patients, supports Senate Bill 629 with amendments.

Preliminarily, MedChi recognizes that this Committee has already passed related legislation (House Bill 824) that does not address any issues raised in the Board of Physicians Sunset Review, but instead opted to wait on the results of the outside consultant's report and to act on all of these various recommendations in 2013. MedChi supports House Bill 824 and that approach.

However, should the Committee choose to go in a different direction on Senate Bill 629, MedChi offers the following comments and amendments. Senate Bill 629 is the result of the 2011 Sunset Review of the Board of Physicians, and relates solely to the regulation of physicians and not the allied health professions that also fall under the Board's governance. 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.

MedChi would also note that on Page 16 of the bill, the Board is urged to hire an outside consultant to review the Board's operations. 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. Providing Services to the Board (p. 2) – Senate Bill 629 would prohibit a person who has served on the Board from providing services to the Board for a period of 3 years after leaving the Board, and likewise prohibits a person who has provided services from then being appointed to the Board until 3 years have lapsed. MedChi supports this prohibition.
2. Search Warrants (p. 3) – Senate Bill 629 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.
3. Consulting Physicians (p. 4-6) – The Board was charged by Chapter 539 of 2007 with developing regulations on physicians who are not licensed in the State, but are engaged by a local physician or hospital to consult on the treatment of a patient. The Board has still not adopted these regulations. Senate Bill 629 would put into statute the requirements for allowing the unlicensed physician to be involved in the treatment of a patient; however, MedChi is concerned with the wording of this section of the bill. As drafted, it allows involvement by the unlicensed physician only if there is “no history of any medical disciplinary action in any other state.” MedChi believes that this language provides the Board with no ability to allow a physician who has a minor infraction over an otherwise long and distinguished career to consult in Maryland, which in some instances could jeopardize the health of a patient in need of such a consult. The language should be amended to provide the Board with some degree of judgment in this regard.
4. Case Resolution Conference (p. 10) – Senate Bill 629 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.

5. Profile Information (p. 11) – 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 10, the words “a summary of charges filed against the licensee that includes a copy of,” and on page 11, line 27 “information relating to” 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.
6. Fines for Reporting of Court Judgments (p. 15) – 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 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 Senate Bill 629 with amendments.

For more information call:

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