

MedChi

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TO: The Honorable Joan Carter Conway, Chairman
Members, Senate Education, Health & Environmental Affairs Committee

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

DATE: February 22, 2012

RE: **OPPOSE** – Senate Bill 866 – *Health Occupations Boards – Regulations – Scope of Practice Advisory Committee*

The Maryland State Medical Society (MedChi), which represents over 7,600 Maryland physicians and their patients, opposes Senate Bill 866.

Senate Bill 866 grants extraordinary authority to the Secretary of the Department of Health & Mental Hygiene to adopt regulations involving scope of practice disputes. While MedChi believes that the Secretary can serve a role in helping to resolve such disputes, it opposes the grant of regulatory authority set forth in the bill.

Current Maryland law expressly states that the Secretary's power does not extend to the decision-making of health occupations boards (See Senate Bill 866 at p. 2). Yet, this bill reverses that longstanding prohibition with an extremely broad grant of power to the Secretary to resolve scope of practice disputes. MedChi believes that scope of practice decisions have always been under the jurisdiction of the General Assembly and should remain so. It is the considered judgment of the elected General Assembly that should decide such matters, not that of any one, appointed person.

To be clear, Senate Bill 866 does not first require the General Assembly to direct the Secretary to take any action with regard to a specific scope of practice dispute. Rather, at any time, a Secretary could permit the General Assembly to leave town in April, convene an Advisory Committee, promulgate regulations and have them adopted long before the General Assembly returns the following January. Sure, there are limited protections like the AELR Committee, but a dispute that the General Assembly may have intentionally not acted to resolve could be changed significantly by the Secretary's regulatory actions during the interim.

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Furthermore, the General Assembly cannot, as a matter of constitutional law, grant regulatory power to any agency without some guidelines and safeguards that define the boundaries of the agency's power. See *Christ v. Dept. of Natural Resources*, 335 Md. 427, 441 (1994). This bill does not contain any such limits. The Legislature has, in countless instances, enacted detailed statutes regulating scope of practice issues, but Senate Bill 866 is a pronounced break from that policy because it grants substantial power to the Secretary, and does so without any guidelines or safeguards.

MedChi does not oppose the notion that the Secretary can help resolve scope of practice disputes by convening knowledgeable professionals to examine the issue and make recommendations. Indeed, the Secretary may already have such power. But the drastic step of granting power to the Secretary to resolve such disputes through regulation is not one that MedChi can support.

For these reasons, MedChi opposes Senate Bill 866.

For more information call:

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