

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 Joseph Vallario, Jr., Chairman
Members, House Judiciary Committee
The Honorable Benjamin F. Kramer
The Honorable Kathleen M. Dumais

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

DATE: March 6, 2013

RE: **SUPPORT** - House Bill 1156 – *Maryland Contributory Negligence Act*
SUPPORT WITH AMENDMENT - House Bill 1182 – *Courts – Commission to Study Maryland’s Fault Allocation System*

The Maryland State Medical Society (MedChi), which represents over 7,500 Maryland physicians and their patients, supports House Bill 1156; it also supports House Bill 1182 if amended.

House Bill 1156 establishes the legal rule of “contributory negligence” in the event it is abrogated by the Maryland Court of Appeals. MedChi believes that a traditional tort rule such as the doctrine of contributory negligence is the exclusive province of the General Assembly to alter.

House Bill 1182 is similar to House Bill 1156 and it does two things. First, it freezes the law of “contributory negligence” and “joint and several liability” as it existed in Maryland as of January 1, 2013. Second, it establishes a Commission to study and recommend changes to the Maryland “fault” alternative system.

Both bills are responses to a case before the Court of Appeals which may result in a reversal of the doctrine of contributory negligence. Interestingly, the case before the Court of Appeals ([Coleman v. Soccer Association of Columbia](#)) is a single defendant case so the issues of “joint and several” liability will not be addressed in that case.

One cannot reasonably construct sensible public policy with respect to contributory negligence unless the issue of joint and several liability is also addressed. While the alteration of contributory negligence rule could allow a partially negligent plaintiff to recover

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a judgment or award, the failure to similarly amend the joint and several liability doctrine would mean that a partially responsible defendant could be liable for the entire verdict or judgment against all defendants. Because the Court of Appeals case involves a single defendant, there will be no alteration of the joint and several liability rule even though there may well be an alteration of the contributory negligence rule. Such a piecemeal rewrite of Maryland law is inadvisable for many reasons.

House Bill 1182 also establishes a Commission to study Maryland's Fault Allocation System. MedChi believes that the current membership of this proposed Commission is insufficient as it does not include a doctor or any representatives of the health care industry. Surely, doctors, hospitals, medical equipment and pharmaceutical manufacturers deserve representation. Most medical malpractice cases are "multi-defendant" so that the issues of joint and several liability are extremely important. The defense of contributory negligence is usually available to a doctor who is being sued by a patient who has refused to comply with the doctor's designated therapy.

In any event, MedChi would support House Bill 1182 if the Commission's membership also represented the health care industry. To that end, MedChi proposes the following amendment:

On page 3, line 6 after the semicolon add the following language: "(IX) ONE REPRESENTATIVE OF MEDCHI, THE MARYLAND STATE MEDICAL SOCIETY."

With this amendment MedChi would support House Bill 1182; MedChi also asks for a favorable report on House Bill 1156.

For more information call:

Joseph A. Schwartz, III
Pamela Metz Kasemeyer
J. Steven Wise
410-244-7000