

MedChi

The Maryland State Medical Society

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TO: The Honorable Joseph F. Vallario, Jr., Chair
Members, House Judiciary Committee
The Honorable Susan K. McComas

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

DATE: March 11, 2015

RE: **SUPPORT** – House Bill 817 – *Health Care Malpractice – Limitation on Noneconomic Damages*

The Maryland State Medical Society (MedChi), which represents more than 8,000 Maryland physicians and their patients, supports House Bill 817.

House Bill 817 reduces the Maryland cap on noneconomic damages in medical liability cases from its current level of \$755,000 to \$500,000 for cases arising on or after October 1, 2015. This is an amount more in line with most states that have such caps. Many states have far lower caps. California, for example, has had a \$250,000 cap since 1976. Texas has a \$250,000 cap.

While many states cap noneconomic damages, some states, such as Virginia, have a total cap on the amount that can be obtained in a medical malpractice case. The Virginia “total cap” is slightly over \$2,000,000.

The rationale for such caps is to control litigation systems from becoming out of control, making insurance prohibitively expensive. Ten years ago, malpractice rates for Maryland OB doctors were well in excess of \$100,000 a year, thus making the practice of obstetrics extremely challenging as a doctor’s net compensation was extremely low and his or her risk of liability was extremely high. In the 2004 Special Session on medical malpractice, the General Assembly passed an HMO tax, and the proceeds of this tax were used, in part, to subsidize doctors’ malpractice premiums.

Just a few years ago, Johns Hopkins was hit with a \$52,000,000 verdict in a “bad baby” case which – even though it was reduced in subsequent appeals – illustrates the economic

dislocation caused by certain jury awards. The Maryland cap on noneconomic damages (pain and suffering) is one of the most liberal amounts of any state that has such a cap. It is currently \$755,000, and increases at a rate of \$15,000 per year. While Maryland caps noneconomic damages, there is no cap on economic damages and, hence, the jury may award all necessary medical and related expenses for a medical injury.

The Maryland cap on noneconomic damages is the principal restraint on jury awards for medical malpractice cases. Returning the cap to an amount similar to most other states, would be a positive assistance to the medical malpractice environment in Maryland.

MedChi believes that Maryland may be at a “tipping point” as it was 10 years ago when rates for medical malpractice insurance spiraled out of control causing doctors to begin declining certain medical procedures, or moving to other jurisdictions. MedChi would urge a favorable report on House Bill 817.

For more information call:

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