

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 Bobby Zirkin, Chair
Members, Senate Judicial Proceedings Committee
The Honorable Lisa Gladden

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

DATE: February 10, 2015

RE: **OPPOSE** – Senate Bill 127 – *Health Care Malpractice – Certificate and Report of Qualified Expert – Objection*

The Maryland State Medical Society (MedChi), which represents more than 8,000 Maryland physicians and their patients, opposes Senate Bill 127.

Senate Bill 127 changes the well established (since 1986) requirements for filing a medical malpractice case. A case must be initiated by a certificate of a "qualified" medical expert attesting to malpractice by the defendants. *Walzer v. Osborne* 396 Md. 563 (2006). The current law allows for the re-filing of defective certificates under certain circumstances so that a meritorious suit is not lost (See p. 2, lines 12-18 and p.3, lines 3-4 of SB127).

SB 127 would upset these rules, first, by requiring an objection to the certificate to be filed within 14 days or forever be lost and, second, by allowing a new certificate to be filed if the original is deemed defective even where limitations have run on the case. The 14 day requirement is unrealistic. Often, the defending doctor would not discover the deficiencies with the certificate or the attesting expert until his or her deposition was taken, many months after the case was initiated. *University of Maryland Medical System v. Waldt*, 411 Md. 207 (2009).

Allowing a new certificate to be filed after the first is declared deficient, without regard to limitations, will encourage the filing of unmeritorious cases as attorneys will rely on any "expert" to file the case, knowing that another "expert" can be located if the first does not pass muster. Medical malpractice is a specialized area of the law and the Maryland plaintiff lawyers who practice

Honorable Bobby Zirkin
Senate Bill 127
Page 2

in this area are experienced and competent. The current law requires these attorneys to perform due diligence BEFORE a case is filed, by locating a properly credentialed attesting expert. SB 127 would effectively end this due diligence and surely result in the filing of more unmeritorious malpractice actions.

MedChi believes that there is no reason for a new exception over and above the exceptions that already exist. MedChi would respectfully request an unfavorable report.

For more information call:

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