

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 Shane E. Pendergrass, Chair
Members, House Health and Government Operations Committee
The Honorable Heather Bagnall

FROM: J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Richard A. Tabuteau

DATE: February 12, 2019

RE: **LETTER OF INFORMATION** – House Bill 364 – *Health Care Practitioners – Medical Examinations on Anesthetized or Unconscious Patients*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, submits this letter of information on House Bill 364.

This legislation would prohibit any health care practitioner or medical student from performing a pelvic, prostate, or rectal examination on a patient who is under anesthesia or unconscious, unless informed consent was obtained; the exam is within the “scope” of care for the patient; or the patient is unconscious and the exam is required for diagnostic or treatment purposes. Obtaining informed consent prior to conducting these procedures is already the law in Maryland. *See Shannon v. Fusco*, 438 Md. 24, 46, 89 A.3d 1156, 1169 (2014)(the law “imposes on a physician a duty to disclose material information that a physician knows or ought to know would be significant to a reasonable person in the patient's position in deciding whether or not to submit to a particular medical treatment or procedure.”). Because a failure to obtain informed consent is already a violation of the law, MedChi questions the need to codify the practice of medicine in this manner.

Nevertheless, MedChi does not oppose House Bill 364, but has asked the sponsor for two clarifying amendments, as follows:

- On page 2, at line 11, strike “scope” and insert “standard”. This reflects the terminology used in the physician statute. *See* Health Occ. §14-404(a)(22).

- On Page 2, at line 12, strike “OR”. On Page 2, at line 14, insert “OR” followed by “(4) AN EMERGENCY EXISTS AND IT IS IMPRACTICAL TO OBTAIN THE PATIENT’S CONSENT.” See Martinez ex rel. Fielding v. The John Hopkins Hosp., 212 Md. App. 634, 680, 70 A.3d 397, 424 (2013)(“[T]he doctrine of informed consent does not apply in emergencies”).

Thank you for your consideration of this information, and of our proposed amendments.

For more information call:

J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Richard A. Tabuteau
410-244-7000