

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 Paul G. Pinsky, Chair
Members, Senate Education, Health, and Environmental Affairs Committee
The Honorable Brian J. Feldman

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

DATE: March 13, 2019

RE: **LETTER OF INFORMATION** – Senate Bill 909 – *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 Senate Bill 909.

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 Senate Bill 909, but asks that it be amended to conform to the House Bill, as follows:

- On page 2, at line 8, 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 9, strike “OR”. On Page 2, at line 11, 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