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).*

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

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