



*The Maryland State Medical Society*

**News: For Immediate Release**  
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## MedChi and AMA Jointly File Amicus Brief in Latent Injury Case

BALTIMORE, December 22, 2023 – MedChi, The Maryland State Medical Society (“MedChi”) and the American Medical Association (“AMA”) have filed an amicus curiae brief before the Supreme Court of Maryland in a case involving a latent injury and the application of Maryland’s noneconomic damages cap. In the case before the court, the plaintiff traveled from Maryland to have a liposuction procedure in Virginia. Approximately two weeks later, the plaintiff was diagnosed with methicillin-resistant *Staphylococcus aureus* (“MRSA”).

The plaintiff filed suit alleging medical negligence, among other claims, and a Maryland jury awarded \$300,900 in economic damages and \$2,000,000 in noneconomic damages. The defendants moved to have the noneconomic damages reduced based on Maryland’s noneconomic damages cap. The plaintiff, however, argued that Virginia law should apply because the bacteria that caused the MRSA infection entered the plaintiff’s body in Virginia during the liposuction procedure. The trial court sided with the defendants and applied Maryland law reducing the noneconomic damages award, but the Appellate Court of Maryland reversed the trial court ruling that Virginia law applied to the damages award.

In their amicus curiae brief, MedChi and the AMA urge the Supreme Court of Maryland to apply the law of the state where the claim first becomes actionable meaning that all elements of a negligence claim are present including the injury. MedChi and the AMA argue that a bacterial infection is a latent injury that does not cause harm when bacteria enter the body. The science supporting this statement is outlined in the brief as follows:

Most bacteria that enter people’s bodies, including during surgery, do not cause harm. *See* Bacterial Infection, Cleveland Clinic, at <https://my.clevelandclinic.org/health/diseases/24189-bacterial-infection>. The injury from an infection occurs after the bacteria begin to multiply and cause damage to a person’s cells, resulting in illness or disease. *See* *Germ: Understand and Protect against Bacteria, Viruses and Infections*, Mayo Clinic, at <https://www.mayoclinic.org/diseasesconditions/infectious-diseases/in-depth/germs/art-20045289>. “An infection occurs when germs enter the body, increase in number, and cause a reaction of the body.” How Infections Spread, Centers for Disease Control & Prevention, at <https://www.cdc.gov/infectioncontrol/spread/index.html>. This process may never occur, takes time to develop if it does, and often can be averted through antibiotics.

MedChi and the AMA assert that the plaintiff in this case did not have an injury and claim until after the plaintiff returned to Maryland and developed a bacterial infection. Accordingly, Maryland law and noneconomic damages case should apply in this case. Indeed, a plaintiff should not be permitted to bring a case in Maryland, have a Maryland jury trial, but then pick the most favorable law depending on the damages award.

#### About MedChi

MedChi, The Maryland State Medical Society, is a non-profit membership association of Maryland physicians. It is the largest physician organization in Maryland. The mission of MedChi is to serve as Maryland's foremost advocate and resource for physicians, their patients and the public health of Maryland. For more information, please visit [www.medchi.org](http://www.medchi.org).