



Maryland Chamber of Commerce

Legislative Position

**SB 358
SUPPORT**

**Judicial
Proceedings
Committee
2/16/10**

SB 358

Health Care Malpractice – Expression of Regret or Apology - Inadmissibility

Bill Summary: This bill would provide that an expression of regret by a health care provider is inadmissible as evidence in civil actions or arbitration proceedings.

Chamber Position: The Maryland Chamber of Commerce supports this bill, which would increase the likelihood of meaningful dialogue between health care providers and patients who have experienced bad outcomes from medical procedures. We feel that this dialogue is important for patients to better understand exactly what occurred during the procedure, and may result in fewer medical malpractice suits being filed.

Access to health care is vitally important to Maryland businesses as employers, health care institutions, and users of health care. The General Assembly's efforts at the 2004 special session were a stop-gap measure that must be further refined. Although the cost of medical liability insurance has stabilized at high levels in recent years, access to health care providers in high risk specialties continues to be a problem. We strongly believe that additional meaningful medical liability reforms are necessary if we are to reduce the cost of liability insurance. It is urgent that the General Assembly enact this legislation to enhance the job that was started during the special session.

For these reasons, the Maryland Chamber urges that this bill be given a favorable report.

Contact: Ronald W. Wineholt, rwineholt@mdchamber.org

baltimoresun.com

Moderating malpractice costs

Our view: A modest prescription for needed reforms that won't harm plaintiffs

February 8, 2010

Maryland dodged a proverbial bullet last month when the Court of Appeals upheld the state's long-standing cap on non-economic damages in most medical liability cases. The ruling allows some control over large damage awards that can drive up the cost of health care.

(over)

But that's hardly cause for celebration. Medical malpractice litigation is still an area that operates as a kind of high-stakes lottery where patients and medical practitioners alike win or lose on the most capricious of circumstances -- actual injury and physician malpractice not always proving to be significant factors. Democrats ought to particularly take note in their post-Massachusetts Senate election funk. While Republicans have given President Obama much grief for neglecting to include any cost-controlling malpractice reform in his massive health care bill, their ire would be more appropriately directed at the state level, where most tort law is written.

Many voters have the impression that Democrats in Annapolis are under the thumbs of trial attorneys who rake in huge sums from such litigation. When the state faced a malpractice insurance crisis five years ago, lawmakers were quick to raise a tax to help subsidize insurance costs but were not so keen on legal reforms that might reduce the cost of so-called "defensive" medicine.

But there are at least two measures the General Assembly could pass this year that would help, at least in some modest way, to reduce costs without doing harm to plaintiffs. Indeed, both proposals could directly benefit patients and their families.

The first is to establish a health court, a circuit court with judges who that are designated to hear medical malpractice claims. It's an idea very similar to the state's business and technology case management program that allows complex technology disputes to be heard by specially-trained judges. Improving the medical expertise of judges can't be construed as a bad thing, and a health court could speed what can be a lengthy, drawn-out process. No longer would litigation be tossed around from judge to judge. It would also bring greater consistency to decision-making.

The second would be to make it possible for doctors in Maryland to apologize to patients and their families for bad outcomes without their statements being used in court as evidence of negligence. The goal is to foster better communication and prevent future medical errors.

The legislature passed an apology law amid the malpractice reforms of a half-decade ago but included in it a major exception. If what the doctor says can be construed as an admission, it can be used in court as a proof of liability. Thus, the apology law requires apologizing doctors to speak in a lawyerly manner -- expressing sympathy but never explaining exactly what happened.

Maryland physicians have made getting rid of the exception their top priority in this year's legislative session. And it's difficult to understand how patients would not benefit from a more candid dialogue with doctors -- sometimes that apology is all that malpractice plaintiffs want in the first place.

No doubt there are trial attorneys who will object to both these ideas because they see advantage in the more litigious status quo. But that's an argument for enriching them, not for reducing the incidence of medical error, improving outcomes for patients or controlling health care costs.

Copyright © 2010, [The Baltimore Sun](#)