



The Maryland State Medical Society

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TO: The Honorable Luke Clippinger, Chair
Members, House Judiciary Committee
The Honorable Jeff Waldstreicher

FROM: J. Steven Wise
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DATE: March 27, 2024

RE: **OPPOSE** – Senate Bill 538 – *Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death*

On behalf of The Maryland State Medical Society, the Maryland Chapter of the American College of Emergency Physicians, and the Maryland Section of The American College of Obstetricians and Gynecologists, we submit this letter of **opposition** for Senate Bill 538.

As introduced, Senate Bill 538 would have repealed the State’s cap on non-economic damages that applies to cases other than health care claims. As amended, the bill nearly doubles the existing cap in those cases. While the physician groups joining in this letter would not be directly affected by the bill, they know that the next effort by the plaintiff’s bar after this one will be to seek a similar change in the cap which applies to health care claims. For this reason, these groups oppose Senate Bill 538.

Non-economic damages are the damages awarded to plaintiffs for pain and suffering. One of the reasons for a cap on non-economic damages is that pain and suffering and emotional distress are inherently subjective and there is no method to accurately calculate or measure how much money to pay someone for these items. These damage awards are the most likely to be disproportionate because by their very nature they are based on emotion. On the other hand, loss of income or the cost of nursing and custodial care for a seriously injured person, and medical bills from hospitals, nursing homes and the like, can be calculated and determined with reasonable accuracy. These “economic damages” have always been fully compensable under Maryland law; they are not capped.

Recognizing that our insurance market could not withstand repeatedly large non-economic damage awards, the General Assembly intervened in the 1980s and implemented a cap on them, as have other states. Even with that cap in place, in 2004, a Special Session of the Legislature was called because of a

medical liability insurance crisis, driven by excessive verdicts, which was forcing OB-GYNs to leave obstetrics practice and causing some doctors to leave Maryland or to retire early. The Legislature again stepped in and enacted a separate cap on non-economic damages for actions in medical malpractice.

Today, Maryland has one of the highest non-economic damage caps in the country for medical malpractice cases at nearly \$900,000. For wrongful death medical malpractice actions involving two or more claimants or beneficiaries, the total amount awarded is limited to 125% of the cap, or over \$1.1 million. These amounts automatically increase each year by \$15,000.

Passage of Senate Bill 538 will undoubtedly be followed by legislation calling for a similar doubling of the medical malpractice cap, or by litigation seeking the same. The General Assembly should heed the lessons of past Legislatures which recognized the need for these damage caps, and not accept this invitation from the plaintiff's bar to once again inject instability into the State's insurance market and to make even worse our current healthcare workforce shortages. We respectfully request that you oppose Senate Bill 538.

For more information call:

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