

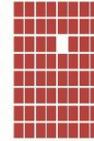
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Maryland Chapter
**AMERICAN COLLEGE OF
EMERGENCY PHYSICIANS**

TO: The Honorable Luke Clippinger, Chair
Members, House Judiciary Committee
The Honorable David Moon

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

DATE: February 26, 2020

RE: **OPPOSE** – House Bill 1037 – *Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death*

On behalf of the Maryland State Medical Society, the Maryland Chapter of the American Academy of Pediatrics, the Maryland Section of the American College of Obstetricians and Gynecologists, and the Maryland Chapter of the American College of Emergency Physicians, we submit this letter of **opposition** for House Bill 1037.

House Bill 1037 provides that the statutory limits on non-economic damages does not apply if the plaintiff proves that the damages resulted from “willful, wanton, malicious, reckless or grossly negligent acts or omissions.” While it is unclear whether the bill includes medical malpractice cases or not, we have erred on the side of assuming that it does. Non-economic damages are those damages awarded for pain and suffering, which are often difficult to quantify and have resulted in disproportionate verdicts, which is what led Maryland and other states to place caps on them.

Maryland law previously recognized “gross negligence” and “reckless conduct”, two of the standards House Bill 1037 would set for lifting the non-economic damage caps, as the standard for awarding punitive damages. These standards were wholly abandoned by the Maryland Court of Appeals because they led to “inconsistent results and frustration of the purposes of punitive damages in non-intentional tort cases.” *See Owens-Illinois, Inc. v Zenobia*, 325 Md. 420, 451 (1992). “Gross negligence simply covers too broad and too vague an area of behavior, resulting in an unfair and inefficient use of the doctrine of punitive damages...A similar problem exists with allowing punitive damages based merely upon ‘reckless’ conduct. To sanction punitive damages solely upon the basis of conduct characterized as heedless disregard of the consequences would be to allow virtually limitless imposition of punitive damages.” *Zenobia* at 457.

The reasons cited by the Court of Appeals in abandoning these standards as to punitive damages are the same reasons that the General Assembly should reject their use as the basis for avoiding the cap on non-economic damages. They will produce inconsistent results, will be unclear to juries and will result in “limitless” avoidance of the cap. These standards were re-evaluated by the House of Delegates just four years ago in 2016 through the Workgroup on Punitive Damages, but the decision was made not to return to them. They should likewise be rejected here as the basis for avoiding the cap on non-economic damages.

Maryland's cap on non-economic damages was put in place to balance the harm to the plaintiff with the need to ensure that the costs of medical malpractice insurance do not become so great that patients do not have access to care. It has for the most part served that purpose, even as one of the highest non-economic damage caps in the country. The General Assembly has considered numerous proposals over the years to allow verdicts to exceed the non-economic damages cap (2014-Sentae Bill 789; 2015-Senate Bill 479; 2016-Senate Bill 574; 2017-Senate Bill 225) and has rejected each of them, understanding what it would do to hospitals and providers and the uncertainty it would create in the provision of health care.

The above-named organizations do not believe that the cap on non-economic damages should be lifted in medical malpractice cases, and strongly opposes imposition of the standards for doing so set forth in House Bill 1037. For these reasons, we request an unfavorable vote.

For more information call:

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