

## Testimony of George S. Tolley III

### SB 681 – Health Care Malpractice Claims – Health Care Provider – Definition

#### UNFAVORABLE

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

Fifty years ago, the General Assembly enacted the Health Care Malpractice Claims Act, Md. Cts. & Jud. Procs. Code Ann. §§ 3-2A-01 *et seq.* (HCMCA), in response to a perceived nationwide “crisis” in the availability and affordability of medical professional liability insurance coverage in this State.

Today, we better understand that the “crisis” in 1975 was a predictable result of the cyclical nature of insurance markets. When insurance markets predictably become “soft,” the premiums charged by insurers decrease due to increased competition. Predictably, insurance markets also “harden” from time to time (about every ten years or so), and insurance rates temporarily increase during those times.

As initially enacted, the HCMCA provided special tort protections for certain “health care providers,” as defined in § 3-2A-01(f). Specifically, tort protections were afforded to those health care providers specifically impacted by the perceived “crisis” in 1975. Over time, the Legislature has added other providers to that list (and, on occasion, has refused to add certain providers).

Protecting health care providers from liability for the consequences of professional malpractice comes at a cost – patients who suffer injury from professional malpractice, and the families of patients who die, are deprived of access to justice in Maryland’s courthouses. Accordingly, the General Assembly must not grant special tort protections to everyone who asks.

SB 681 seeks to expand special tort protections broadly, in a way that would extend protections to providers who have *never* experienced a “crisis” in availability or affordability of liability insurance. There is no evidence, for example, that occupational therapists have ever had any difficulty securing affordable liability insurance. In addition, SB 681 is vaguely drafted, which will spawn costly appellate litigation as the courts struggle to identify who is, and is not, entitled to special tort protection.

As currently drafted, and in the continuing absence of a rational basis for expanding special tort protections for hospital-based health care providers, I respectfully ask for an **UNFAVORABLE** report on **Senate Bill 681**.