

MEDICAL MUTUAL

Liability Insurance Society of Maryland

Bill: House Bill 1099 – Civil Actions – Punitive Damage Awards – Surcharge

Date: March 5, 2025

Position: *Oppose*

Medical Mutual opposes House Bill 1099. House Bill 1099 would allow punitive damages to be awarded in a civil action if the plaintiff proves by clear and convincing evidence that the defendant acted with “gross negligence.” Gross negligence includes, among other things, a “failure to exercise even slight care,” a “pattern of repeated misconduct,” and “acts or omissions that create a high degree of risk or harm to others.” This drastic relaxation of the standard for an award of punitive damages could transform practically every medical liability action into one in which punitive damages are sought, increasing the complexity of medical liability litigation and the cost of defending claims, and leading to higher MPL insurance rates.

Unlike compensatory damages, which are intended to compensate injured parties for their injuries or losses to make the injured person whole, punitive damages are aimed at the different purposes of deterrence and retribution.¹ House Bill 1099 would overturn the current standard of liability for an award of punitive damages as established in *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992). In *Zenobia*, the Supreme Court of Maryland held that punitive damages may be awarded if the defendant’s conduct rose to the level of actual malice (evil motive or intent to do harm, or knowing that its actions would be harmful) as opposed to implied malice (gross negligence, recklessness, or should have known of the harm). As a result of the *Zenobia* decision, Maryland citizens and businesses have had a very clear standard of liability that has been consistently applied by the courts over the past 33 years.

As the largest provider of medical professional liability (MPL) insurance to private practice physicians in Maryland,² Medical Mutual is concerned that substantially weakening the high bar required for an award of punitive damages will put pressure on a precarious balance in the civil liability system that allows plaintiffs to recover damages for an injury while maintaining continued access to quality health care across the State. Making it much easier for plaintiffs to obtain virtually unlimited punitive damages, in addition to economic and non-economic damages, would tip the

¹ *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003).

² Medical Mutual was created in 1975 by an act of the General Assembly at a time when other MPL insurers withdrew from the State, leaving most physicians without insurance protection. Thanks to the wisdom of the General Assembly, the Governor, and others who were involved in Medical Mutual’s creation, we are celebrating our 50th year as a physician-owned and directed mutual insurer, providing comprehensive MPL insurance to Maryland Physicians.

balance and upend the current stability in the MPL insurance market.

The purpose of punitive damages is not to compensate a person for an injury, but to punish a defendant for misconduct and to deter others contemplating similar conduct. Medical Mutual believes a change is not needed as the *Zenobia* standard adequately meets the purpose of punitive damages while providing appropriate and predictable relief to injured plaintiffs.

For these reasons, Medical Mutual respectfully requests an UNFAVORABLE report on House Bill 1099.

For more information contact:

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