



Maryland Student Legislature

Office of the Governor

February 27, 2005

Governor Byron E. Macfarlane Issues Veto of R020-0405, A Resolution Concerning the State of Medical Lawsuits

The cost of medical malpractice insurance and the desire and need for access to health care providers, especially specialists in several fields, are of great concern to all Marylanders. Medical malpractice lawsuits are indeed at times frivolous, but are more often worthy of trials and damages for injured families. At one extreme, we can leave the system as it is, or at the other extreme we can put limits on all awards, and deprive devastated families of the awards they deserve. There is a third way, and that is to find a middle-of-the-road solution that limits frivolous malpractice suits without hurting families.

During the 2004 Presidential campaign, Senator John Kerry proposed setting up independent, arbitration-esque courts which would be able to identify frivolous suits, penalize lawyers who bring them, and allow the meritorious suits to continue to trial. This is the kind of direction we should be heading in, where we can compromise on a common-sense solution to the problem at hand.

This legislation addresses tort reform in a very general way, with no facts or statistics to warrant support for HB301 and the cross-filed Senate version, SB221. I have yet to see any evidence which supports the allegation that the cost to insurance providers incurred by trial costs, attorneys fees and damages constitute such a large contribution to the quickly-escalating cost of medical malpractice insurance that we need to so dramatically limit an individual's ability to bring suit against health care providers who have injured them.

Perhaps we should be looking at how many our hard-earned dollars we pay for insurance go to high-powered lobbyists in our state's capital? How about how much of that money goes to padding their profit margins? Cushy pensions and severance packages for their CEOs? Should we cap those as well?

The legislation that the bill this body passed yesterday advocates the Maryland General Assembly approve, HB301, could not realistically receive my endorsement.

Since the passage of R020-0405, I have actually read the text of House of Delegates bill 301, all 24 pages of it. In addition to capping all awards in medical malpractice lawsuits, this legislation limits interest on judgments to a rate of about two or three percent, down from the current maximum of 10 percent. It prohibits physicians from spending more than 20% of their working time providing expert

advice if that advice pertains to individuals who are not their personal patients, or if that advice leads or *could* lead to testimony in a personal injury lawsuit.

This bill sets up an inordinately bureaucratic and convoluted system of trying medical malpractice lawsuits, where endless limitations, restrictions, requirements and criterion for certifications and licenses, eligible evidence, awards, on how doctors conduct their businesses, and on how our state's courts function, that this legislation would be a nightmare. A convoluted mess which would hurt doctors, patients, burden our court system with more bureaucracy and, again, limit damages awarded to families devastated by doctors who fail to do their jobs well.

Finally, the Department of Legislative Services, the expert, non-partisan state agency which analyzes all legislation in the General Assembly, has yet to issue a Fiscal and Policy Note to determine this legislation's impact on the state's economy and on the state government. Furthermore, this bill has not even been vetted by a committee of the House of Delegates for any complications this bill would cause.

House Bill 301 is not the solution to the rising cost of medical malpractice insurance. We need to seek out a third way, a common-sense compromise which trial lawyers, doctors, insurance companies, citizens, liberals, and conservatives can all live with, and R020-0405 fails that test.

Sincerely,

Byron E. Macfarlane
Governor