

In June 2004 I appointed the Governor's Task Force on Health Care Access and Medical Malpractice. I requested that both you and President Miller appoint two members to the task force. You appointed two members, although Delegate Brown was unable to serve. You failed to appoint a replacement for Delegate Brown despite requests to do so. President Miller refused to appoint any members. President Miller also appointed his own Senate Special Commission on Medical Malpractice. I spent much of the summer and fall traveling around the State visiting hospitals and other health care facilities, hearing from the providers first-hand the extent of their problems. You have also visited many facilities during this time. I became even more convinced that this was an urgent problem that should be addressed immediately.

Early in the fall I began to have discussions with you and President Miller to explore whether we could reach common ground that would allow us to convene an extraordinary session to address the problem. I met with you individually and together and also met with many interested parties. I presented you with two different drafts of a bill for your review and consideration. On December 17, 2004, you, President Miller, and I met and reached agreement on all of the substantive issues that should be in a bill. These issues were contained in a one-page list of issues that we reviewed in detail. We also added two items suggested by you that had not been the subject of previous discussions. The only issue on which there was no agreement was the funding source for the short-term relief. It was very clear that the Administration would sponsor the legislation. With the exception of those items you submitted and those items proposed by President Miller, virtually the entire bill contained provisions that you had previously reviewed.

As with all negotiations, each side had to make compromises. I would have preferred many additional legal reforms, specifically periodic payments of large judgments, changes to the collateral source rule, and possibly limited immunity for emergency room providers. In accordance with our agreement, the bill did contain other legal reforms, such as establishing a single cap on noneconomic damages in death cases and sensible limitations on economic damages relating to past medical bills, future medical bills, and lost wages. It made procedural changes, including changes relating to expert witnesses. It made changes to patient safety laws and insurance reforms. It also provided short-term assistance to health care providers. On the whole, I believed that the bill would have a positive impact on malpractice insurance premiums, would not harm plaintiffs, and overall represented significant progress. It would have sent a clear message to the health care community that we were serious about addressing their concerns.

I was aware that Senator Brian Frosh, the chairman of the Senate Special Commission on Medical Malpractice, would introduce a bill during the special session. From our discussions and because of the deal that was struck, however, I believed there was a commitment that the Administration bill would be the primary bill considered by the General Assembly. It was not until I was sitting at the witness table in the Joint Hearing Room waiting to testify on my bill that I became aware that you also had your own bill. If this were my only objection, I would have been delighted to sign this bill. Unfortunately, as stated above, House Bill 2 is woefully inadequate. I will now detail my objections to the bill.