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January 21, 2020

To: The Honorable Paul G. Pinsky  
Chair, Education, Health, and Environmental Affairs Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit

Re: Senate Bill 103 Health Occupations - Diagnostic Evaluation and Treatment of Patients -  
Disciplinary Actions (The Patient's Access to Integrative Healthcare Act of 2020):  
Oppose

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) opposes Senate Bill 103 because exempting providers of integrative, complementary, alternative or nonconventional medical care from the full disciplinary authority applicable to conventional medical care, as the bill proposes, would put patients at risk of harm.

We are particularly concerned by the proposed use of a patient "informed consent" requirement that, if satisfied, would virtually exempt integrative, complementary, alternative or nonconventional medical care from disciplinary authority by all health occupation boards. A narrow disclosure of "the nature of the diagnostic evaluation or treatment" – without full explanation of the risks, benefits and costs of conventional care as well as the integrative, complementary, alternative or nonconventional care-- plus written consent would broadly exempt a provider from disciplinary authority, to the provider's benefit and the patient's potential detriment. We believe this provision would shift professional and ethical responsibilities from a provider to a patient in a manner that is simply wrong. Moreover, the HEAU does not believe imposing fuller disclosure requirements would adequately protect patients from the risks posed by the bill's reduction of disciplinary authority because patients cannot realistically protect themselves from all of the potential risks of unregulated medical care.

The bill would render the practice of integrative, complementary, alternative or nonconventional care virtually unregulated. All health occupations boards would be prohibited from taking disciplinary action unless the board proves that the treatment has a significant safety risk that is not outweighed by the potential benefits, or the board can prove by clear and convincing evidence that the provider knew the diagnostic or treatment method did not have a reasonable

basis and was intended to defraud the patient. There is no definition of “integrative”, “complementary”, “alternative” or “nonconventional” and the vagueness would invite practitioners to raise the defense if faced with a case involving standard of care.

Finally, changes to current peer review processes, i.e., requiring unanimous decisions and inclusion of a peer reviewer “with integrative, complementary, alternative or nonconventional training” risks creation of veto power for the benefit of nonconventional providers while conventional providers remain subject to the full disciplinary authority of all health occupations boards. We submit there is no evidence of an urgent need for the extraordinary protections the bill would create for certain providers.

For these reasons, we urge the committee to give the bill an unfavorable report.

cc: Members of the Education, Health, and Environmental Affairs Committee