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

From: The Office of the Attorney General

Re: Senate Bill 305 (State Board of Physicians - Dispensing Permits): Oppose

The Office of the Attorney General opposes Senate Bill 305 which would remove inspection authority over physician dispensing permits from the Office of Controlled Substances Administration (OCSA) and vest that authority exclusively in the Board of Physicians – which already has authority to conduct inspections. The tragic fact is that ongoing illegal conduct by some physicians continues to extend the opioid crisis and makes appropriate the continued scheme of OCSA oversight. We therefore urge caution against making any statutory changes that would threaten the independence and power of OCSA to immediately suspend or revoke CDS registrations of physicians based on its independent inspection results and other potential evidence.

While Maryland law generally provides that physicians prescribe drugs and pharmacists dispense drugs, a physician may obtain a dispensing permit from the Board of Physicians and dispense drugs to patients “when a pharmacy is not conveniently available to the patient.” Health Occupations § 12-102(a)(2). A physician who also has a CDS registration may dispense controlled substances to patients when a pharmacy is not conveniently available to the patient, a standard with obvious potential for abuse.

The risk of abuse currently is mitigated by the fact that OCSA has inspection authority over physician dispensing permits. OCSA also has inspection authority over all CDS registrations and employs 6 inspectors who are registered pharmacist plus 2 others who are not registered pharmacists. The expertise and experience of these inspectors, combined with OCSA’s independence and impartiality, are essential protections for the public from those physicians who would illegally prescribe or dispense controlled substances.

This bill would eliminate OCSA's inspection authority over dispensing permits and vest that authority exclusively in the Board of Physicians (the Board). The cross-file was amended in subcommittee last week to require the transfer of 2 pin positions for inspectors from OCSA to the Board.

We think the independence of OCSA in the performance of all of its functions needs to be preserved or strengthened in the midst of the worsening opioid crisis, and that none of OCSA's functions should be removed to the Board. We strongly oppose the reduction of OCSA's inspectors by 2 pin positions at a time when their services are more important than ever.

The potential for abuse under the current "patient convenience" standard heightens the need for independent, impartial inspections by an agency with OCSA's subject matter expertise, which is essential for the prevention of further harm to the public—a goal that far outweighs the Board of Physicians' stated goals for this bill.

History proves that the Boards of Physicians take variable approaches to issues which may reflect the interests of those on the Board at any given time. The current chair is a pain management physician whose practice includes 25 physicians and 26 Advanced Practitioners. To avoid the public's perception that business interests matter more than public safety, we believe it is important to preserve current arrangements as they are, at least for the duration of the opioid epidemic which has no end in sight.

To the extent the Board and MedChi have argued that only 650 physicians have dispensing permits, and only 35% of those are dispensing controlled substances, we point out that:

- 1) Those are the numbers under the current scheme where OCSA—not the Board- has inspection authority;
- 2) There is no cap on the number of the permits the Board may issue, and no safeguard against a foreseeable increase in the number of permits once physicians understand the Board is the exclusive inspection authority. This is foreseeable because all physicians understand that any record relating to a Board inspection, investigation or disciplinary proceeding is absolutely protected from discovery or admissibility in a civil or criminal action. Health Occupations §14-410.

Enacting this bill would increase the risk of illegal prescribing and dispensing by physicians in Maryland; would cut OCSA's resources at a time when they should be increased; and would impair if not preclude criminal and civil actions by the units in the Office which seek to protect the safety of people in Maryland.

We urge the committee to give an unfavorable report on Senate Bill 305.

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