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

FROM: Hannibal G. Williams II Kemerer, Chief, Legislative Affairs
Office of the Attorney General

RE: SB 297 – Administrative Procedure Act – Dispositions and Summary
Suspensions – Time Periods (**OPPOSE**)

The Office of the Attorney General urges this Committee to issue an unfavorable report on Senate Bill 297. This legislation requires an agency or the Office of Administrative Hearings (OAH) to dispose of a contested case within ninety (90) days from the evidentiary hearing held on the case. If the agency or the Office of Administrative Hearings does not dispose of a case within thirty (30) days after receipt of a notice to the agency, the decision will be deemed in favor of the named party.

The bill will negatively impact clients within the Office of Attorney General, in addition to the Health Occupations Boards, who conduct contested case hearings and issue summary suspensions of licenses.

Imposed Time Limit Allows Dangerous Practitioners to Continue Practicing

Senate Bill 297 amends State Government §10-210(c)(2) requiring the matter to be deemed in favor of the licensee if the final order is not received within a certain time. This order would be the first law that would impose a penalty on an agency for not issuing a decision within a certain period of time – often placing members of the public at risk by allowing dangerous practitioners to continue practicing without discipline, simply because the



decision took too long to be issued. Complex cases often take longer to resolve and under the proposed amendment, Boards and other units would not have time to fully evaluate the evidence and write a thorough and well-reasoned decision.

In addition, if contested, a case might have an impact on competition generally. Under Health Occ. § 1-203 (c) and COMAR 28.04.01, before a final decision is issued, a Board may need to refer the decision to Office of Administrative Hearings for review and approval in order to qualify for State action immunity under the antitrust laws. This takes additional time. A Board cannot issue a final decision under these circumstances without the Office of Administrative Hearings approval.

Finally, the bill does not take into account proposed versus final decisions. The language is ambiguous as to whether the ninety-day period only applies to the proposed decision that results from the evidentiary hearing or the final decision issued by the agency. If the language is construed to mean that the final disposition would have to be issued within ninety days, this would effectively eliminate time for the exceptions process, which is important for due process. Currently, the Office of Administrative Hearings has ninety days to issue a proposed decision, so a ninety-day deadline for final decisions is unreasonable.

Time Limit on Final Orders for Summary Suspensions

Senate Bill 297 amends State Government §10-226 to force all Boards to hold evidentiary hearings themselves (unless they delegate the final decision to the Office of Administrative Hearings - in which case the expertise of the Boards would be rendered meaningless). The bill text only requires a hearing and order after the summary suspension starts - it does not account for the licensee to be served with actual notice or request a hearing. This would also eliminate the current opportunity for a licensee to request and participate in a show cause hearing before an evidentiary hearing.

The 30-day time limit would require the Boards to set an immediate hearing date in the suspension order, depriving the licensees of time to adequately prepare for the evidentiary hearing, likely violating their due process rights. There would be no opportunity for a licensee to request additional time to hire counsel, or to reschedule the hearing because of a scheduling conflict. Some Boards do not meet within thirty days of the start of the suspension period, which would eliminate the opportunity to conduct post-deprivation summary suspension hearings for smaller Boards.

No Opportunity for Continuances

Senate Bill 297 does not take into account postponement requests or agreements to consolidate the summary suspension hearing with the evidentiary hearing on charges for

violations of the Health Occupations Practice Act. Due process does not necessarily correlate with a speedy resolution.

For the reasons set forth above, the Office of the Attorney General suggests an unfavorable report of Senate Bill 297.

cc: Members of the Committee