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March 2, 2021

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

From: The Office of the Attorney General, Health Education and Advocacy Unit

Re: Senate Bill 836 (State Board of Dental Examiners - Disciplinary Action - Disclosure Requirements and Licensee Profiles): Letter of Information

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) submits this letter of information relating to patient privacy rights in the context of Senate Bill 836, which would increase the transparency and thus public awareness of a dentist's disciplinary history, goals we consider vitally important to patient safety. We thank the sponsors for their efforts to enhance patient protections. The HEAU assists patients who have been physically and financially injured as the result of substandard dental care, billing irregularities, or otherwise unprofessional conduct. Sometimes that harm could have been avoided if patients had been able to avoid dentists with troubling disciplinary histories. We acknowledge the balancing act required to preserve the best aspects of the medical review privilege inherent to investigatory and disciplinary processes, and increased transparency for the public's benefit.

In seeking that balance, we ask the Committee to expressly protect patient privacy rights that could be at risk with the required and permitted disclosures by the Board in this bill. Virtually all Board reviews involve patient dental records that are protected under federal and state privacy laws. This bill, as drafted, seemingly permits disclosures that could compromise patient privacy if the receiving party does not have adequate confidentiality rules. For instance, section 4-322 (D) provides that the Board shall disclose any information in the Board's disciplinary file ("record") to a facility disciplinary committee/employer of the licensee if requested and other criteria are met, and section 4-322 E (2) provides that the Board shall disclose its "competency-related" disciplinary

review records to a facility disciplinary committee/employer of the licensee, if requested and other criteria are met.

More concerning is section 4-322 (I), which authorizes the Board to disclose records to any person the licensee requests. We would also ask the Committee to consider clearly defining, and perhaps restricting, the persons to whom a licensee may request disclosure by the Board of any information in the licensee's disciplinary review committee file, to prevent an aggrieved licensee from being able to weaponize private information against a patient.

Notably, 4-322(O) bill does provide that any personally identifiable information contained in records disclosed to the Governor, Secretary, or the Legislative Auditor in accordance with the State Government Article may not be redisclosed.

Finally, the process set forth in section 4-322 (L) is not adequate to protect patient privacy and does not meet HIPAA standards for research. The section allows inspection of records which necessarily include patient records for a research project if the Executive Director permits it. We respectfully submit that the Board's Executive Director does not have the expertise to qualify as a substitute privacy board.

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/research/index.html>

Thank you for considering our concerns.

cc: Sponsors