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To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: The Office of the Attorney General

Re: Senate Bill 311 (Health Care Heroes Protection Act): Opposition

The Office of the Attorney General (the Office) opposes Senate Bill 311. The bill would alter current law to retroactively provide immunity for an expanded class of acts or omissions committed by an expanded class of healthcare providers, and extend immunity for six months after the catastrophic health emergency ends. This Office regards the proposed expansion and extension of immunity as unjustifiable and likely to increase the harms Marylanders are suffering during the ongoing pandemic with disproportionate impact on those in low income and communities of color, whose vulnerabilities are documented in the Attorney General's COVID-19 Access to Justice Task Force report. <https://www.marylandattorneygeneral.gov/Pages/A2JC/default.aspx>

Current law provides that "[a] healthcare provider is immune from civil or criminal liability if the healthcare provider acts in good faith under a catastrophic health emergency proclamation." Md. Code Ann., Public Safety § 14-3A-06. This Office considers the immunity to be limited to health care providers who are required to act under an order of the Governor or the Secretary or are working to fulfill a requirement of the order. *See* 100 Md. Op. Atty. Gen. 160, December 28, 2015 ("A health care provider who acts in accordance with State-required [ventilator] allocation criteria will thus almost by definition be acting in good faith, regardless of the negative consequences arising from the withdrawal of a patient's ventilator"). Orders issued by the Secretary of Health throughout the pandemic have stated: "MDH does not construe the immunity provisions in Pub. Safety Art. § 14-3A-06 or Health Gen. Art. § 18-907 to apply to a healthcare provider or facility performing non-COVID-19 related procedures or appointments." Granting broad immunity beyond this narrow band of existing immunity, as proposed in the bill, could protect acts or omissions that should not be immune from liability.

Harmful or ineffective products continue to be marketed and sold as Covid-19 cures or preventatives, and Marylanders require protection or recompense from health care providers directly or indirectly involved in these scams. As reported by USA Today in a September 3, 2020 article entitled “We’re not your slaves!: Alternative health providers bristle at warning letters about their coronavirus treatments” (sections omitted):

Since the onset of the pandemic seven months ago, the FDA and the FTC have sent out an average of 13 letters a week warning companies and individuals to stop making false claims about their ability to prevent or cure COVID-19.

“The healthcare system in this country is rigged against inexpensive, safe, and effective natural remedies in favor of expensive pharmaceutical drugs,” said Clark Hansen, a naturopathic medical doctor in Arizona, in an email message to USA TODAY. “The US medical system is ignoring any treatment that is not patentable and therefore cannot provide a multi-billion profit for some giant healthcare company.”

The [FTC warned Hansen](#) in May to stop implying that a combination of elderberry, echinacea and the herb andrographis could prevent coronavirus infection.

Many of the recipients have a history of fraud and malfeasance. They include televangelist Jim Bakker, who spent five years in prison for defrauding his own ministry back in the 1980s; Gordon Pedersen, who wears a lab coat and stethoscope and calls himself a doctor even though he holds no medical degree; and Matthew Martinez, who agreed to give up his chiropractor's license in 2016 after being accused of having sex with clients and suggesting that a patient with multiple sclerosis could be cured by drinking breast milk.

Both [Bakker](#) and [Pedersen](#) told their followers that Silver Solution was the antidote to COVID-19 and were sued by the government for failing to address allegedly false claims outlined in warning letters.

<https://www.usatoday.com/story/news/investigations/2020/09/03/government-coronavirus-crackdown-angers-alternative-health-providers/5660997002/>

Current law permits the Attorney General and the Consumer Protection Division to protect Marylanders from physical and financial harms resulting from non-immune acts or omissions by health care providers. We urgently seek to continue this work on behalf of Marylanders, because we expect the risk of potential harms to continue if not worsen, based on events here and in other states. See <https://ag.ny.gov/press->

[release/2021/attorney-general-james-releases-report-nursing-homes-response-covid-19](#)
and <https://www.healthaffairs.org/doi/10.1377/hblog20200504.459546/full/>

The report of the New York Attorney General illustrates some of the problems that a misguided attempt to provide immunity can create, leading the New York Attorney General to urge repeal of immunity that could put vulnerable seniors at risk.

We urge the Committee to give Senate Bill 311 an unfavorable report.

cc: Sponsor