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I write in support of SB77 with amendment. As a practitioner with over 20 years' experience in the field of representing various licenses health care providers, I have had the opportunity to represent licensees of various boards, including:

- the Board of Physicians
- the Board of Dental Examiners
- the Board of Nursing
- the Board of Examiners of Psychologists
- the Board of Pharmacy
- the Board of Occupational Therapy Practice
- the Board of Social Work Examiners
- the Board of Physical Therapy Examiners
- the Board of Professional Counselors and Therapists

Whenever a licensee of these boards is under investigation that could lead to sanctions against their license, up to and including suspension or revocation of that license, they have a basic right to representation. Unfortunately, some of the board investigators attempt to limit that right during the investigative interview. When they do so, they rely on a Memorandum from the Office of the Attorney General that states, essentially, that there is no **constitutional** right to an attorney when the licensee is interviewed by a board investigator. SB77 is intended to provide a **statutory** right to counsel during that interview.

When a licensed health provider is the subject of a complaint or investigation by his or her licensing board, the investigation may include an interview of the licensee. The boards are not uniform in this investigative process. Some may provide the licensee with a copy of the complaint being investigated. Some may not. Some boards are not uniform even within their own investigative process. For example, the Board of Physicians sometimes provides a copy of the complaint and sometimes will refuse to do so.

Similarly, the boards are not uniform with respect to the presence of counsel when the licensee is being interviewed by a board investigator. Many board investigators recognize and respect the desire of licensees to be represented but unfortunately a number of them do not, and take an antagonistic view when the licensee indicates that he or she will be accompanied to the interview by counsel. They threaten to exclude the attorney altogether or indicate that if the attorney speaks, he or she will then be excluded.

SB77 is not intended as a means for counsel to unduly interfere with or disrupt an investigative interview, just as it is assumed that the State does not intend for investigators to wrongfully

threaten or attempt to intimidate licensees in the interview. The interviews are almost always recorded, so any concern about disruptive behavior can be examined through those tapes, if necessary. But if the licensee is deprived of legal advice during the interview, the licensee is at risk of being intimidated or led to inadvertently provide inaccurate responses, through questions that are unclear at best, and biased at worst. If the overall investigation, including the interview, is aimed - as it should be - at obtaining facts in a fair and unbiased fashion, it is to the benefit of all that the licensee have the right to have counsel present to advise them during these interviews. Counsel should be allowed to participate to the extent necessary to protect their client's rights, without unduly interfering with the ability of the investigator to obtain factual information.



M. Natalie McSherry