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January 21, 2022

To: The Honorable Shane E. Pendergrass  
Chair, Health and Government Operations Committee

From: The Office of the Attorney General's Consumer Protection Division

Re: House Bill 260 (State Board of Physicians - Dispensing Permits): Oppose

The Office of the Attorney General's Consumer Protection Division opposes House Bill 260 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.

Such suspensions or revocations are arguably the strongest preventive measures in the Controlled Dangerous Substance (CDS) Act, enacted to “prevent [CDS] abuse, which results in a serious health problem to the individual and represents a serious danger to the welfare of the people of the State.” Md. Code Ann., Crim. Law § 5-102(b)(1)(ii). OCSA enforces the CDS Act from the point of registration through inspection and revocation or suspension when “an imminent danger exists to public health or safety.” Md. Code Ann., Crim. Law § 5-308(d).

Of crucial importance is the CDS Act's mandate that the summary suspension or revocation proceedings “**shall be independent of and not instead of any criminal prosecution or other proceeding under State law.**” (emphasis added) Md. Code Ann.,

Crim. Law § 5-308(c)(1). Indeed, OCSA's inspection authority is integral to its summary suspension or revocation authority and stripping OCSA of its inspection authority risks running afoul of the intent and provisions of the CDS Act.

Maryland's residents and communities continue to be victimized tragically by the opioid crisis. They expect and deserve the State's best efforts to prevent illegal conduct of physicians with CDS registrations which includes, at a minimum, fulsome processes by an independent agency to suspend or revoke CDS registrations. There is no reason to carve physicians who dispense from concurrent oversight by OCSA and the Board of Physicians. OCSA has CDS expertise and a distribution system-wide purview that the Board of Physicians simply lacks.

The Board of Physicians, in contrast, enforces the Medical Practice Act which imposes medical standards of care on physicians, involving an independent regulatory scheme and different, albeit overlapping, subject matter expertise. With regard to its existing duties, the Board of Physicians often reports a lack of adequate resources to fulfill its current patient protection mandate.

It appears that factual investigations may occasionally trigger OCSA's inspections and processes as well as the Board's inspections and processes, and that OCSA maintains its independence in keeping with the CDS Act. The Board has advised us that OSCA does not share investigative information needed by the Board for its disciplinary process and that OCSA's investigative process is inadequate. These concerns should be addressed without stripping OSCA of its independent function.

Finally, the Division submits that the physician dispensing permit scheme warrants a comprehensive and critical review. The Board of Physicians may issue a dispensing permit if the permit is "in the public interest," meaning the dispensing of drugs or devices by a licensed physician "to a patient when a pharmacy is not conveniently available to the patient." Md. Code Ann., Health Occ. § 12-102(a)(2). This standard may be too broad for the dispensing of controlled dangerous substances.

For the foregoing reasons, the Office of Attorney General's Consumer Protection Division urges an unfavorable report on HB 260.

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