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TO: The Honorable Melony Griffith
Chair, Senate Finance Committee

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

RE: SB673 – Physician Assistants – Revisions (Physician Assistant
Modernization Act of 2023: **Letter of Concern**)

The Office of the Attorney General writes this Letter of Concern regarding the expanded immunity protections for physician assistants in Senate Bill 673. Among the provisions relating to scope of practice, education requirements, and authorized acts, tasks, and functions, the bill also grants immunity to physician assistants who are practicing during a state-declared disaster.

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 COVID-19 pandemic, for example, 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.”

Acts or omissions outside a narrow grant of broad immunity under extraordinary circumstances need not and should not be immune from liability. *See* <https://ag.ny.gov/press-release/2021/attorney-general-james-releases-report-nursing-homes-response-covid-19> (report of the New York Attorney General that 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.)

The expanded immunity in this bill is especially troubling when read with the removal of the requirement that the physician assistant practice under the supervision of a physician. Such concurrent expansion of both scope of practice and immunity protection seems likely to make it more difficult for individuals to bring meritorious claims. Whether a decision which results in harm was related to a particular declared disaster/emergency/catastrophe, whether it was within the physician assistant's scope of practice, or whether it was reasonable under the circumstances, are questions of fact which should be determined in court and not denied investigation by a grant of immunity.

While it is reasonable to provide some protections for health care workers who might be making difficult health care decisions during an emergency, it would not be appropriate to broadly protect acts or omissions from liability. We urge the Committee to consider these concerns and strike this provision from SB673.

cc: Sen. Kathy Klausmeier
Sen. Mary Beth Carozza