

January 26, 2022

The Honorable Paul G. Pinsky, Chair  
The Honorable Cheryl C. Kagan, Vice Chair  
Senate Education, Health, and Environmental Affairs Committee  
Maryland General Assembly  
2 West Miller Senate Office Building  
Annapolis, MD 21401

**RE: Opposition to Senate Bill 77 — Health Occupations Boards – Investigations – Right to Counsel**

Dear Chairperson Pinsky and Vice Chairperson Kagan:

Public Citizen, a nonprofit consumer advocacy group with more than 15,000 members and supporters in Maryland and more than 500,000 members and supporters nationwide, strongly urges the Maryland Senate’s Education, Health, and Environmental Affairs Committee to soundly reject Senate Bill 77 (SB 77) as written and give it an unfavorable report.

Public Citizen does not oppose due process and the right to counsel, but we do oppose SB 77. Although SB 77 appears innocuous on its surface, it would seriously impede the ability of the Maryland Board of Physicians (the “Board”) to properly investigate and discipline physicians. Board interviews are not depositions, and unlike in criminal cases, a physician is required by the Maryland Medical Practice Act to cooperate with any lawful investigation by the Board. We understand that the Board always permits counsel to sit in on and participate in interviews of licensees, but counsel are advised that if they become disruptive, they may be asked to leave. We are concerned that SB 77 would seriously impede the Board’s ability to deal with disruptive counsel and would make it impossible for the Board to enforce “failure to cooperate” as a disciplinary ground in cases where a physician’s attorney disrupts the investigative process during interviews of licensees.

We also are concerned that the term “interview” is not defined in SB 77 even though the bill says a licensee may “have counsel present at **any interview** of the licensee...” If “interview” is interpreted to mean any communication between the Board and a licensee during an investigation (including, for example, during unscheduled inspections), it would be impossible as a practical matter for the Board to conduct reasonable investigations and unscheduled inspections, which are a necessary part of its activities to protect the public.

We believe that to ensure the health and safety of Maryland residents and others who seek health services in the state, the ability of the Board to conduct investigations must not be impeded. The fact that the Maryland Board ranks only 27<sup>th</sup> in our rankings of state medical boards, based on the rate of serious disciplinary actions taken against licensees from 2017 to 2019,<sup>1</sup> demonstrates

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<sup>1</sup> Public Citizen. Ranking of the Rate of State Medical Boards’ Serious Disciplinary Actions, 2017-2019. March 31, 2021. <https://www.citizen.org/wp-content/uploads/2574.pdf>. Accessed January 25, 2022.

that it is unlikely the Board is running roughshod over the due process rights of Maryland physicians during the conduct of investigations into quality of care or physician conduct and related disciplinary proceedings and that the Board actually should be more diligent in pursuing investigations and disciplinary actions. The legislature should not make it more difficult for the Board to do what is necessary to protect the public from the relatively few physicians who are incompetent or engage in professional misconduct.

The Maryland General Assembly must not support legislation that would endanger the safety of patients in Maryland by making it more difficult for the Board to do its job. The job of any state medical board is to protect the public's health, safety, and welfare through the proper licensing, disciplining, and regulation of physicians. The apparently innocuous SB 77, as written, would provide unwarranted protections to physicians and undermine the Board's ability to fulfill its mission. The legislation would protect potentially dangerous doctors who practice in Maryland while harming the public.

In closing, Public Citizen urges the Maryland Senate's Education, Health, and Environmental Affairs Committee to place the health interests of Maryland patients above the protection of incompetent and unprofessional physicians by giving SB 77 an unfavorable report.

Thank you for considering our views on these important patient rights and safety issues.

Sincerely,



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cc: Members of the Senate Education, Health, and Environmental Affairs Committee