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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

February 8, 2022

To: The Honorable Paul G. Pinsky
Chair, Education, Health and Environmental Affairs Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: Senate Bill 159 (Health Occupations – Authorized Prescribers – Reporting of Financial Gratuities or Incentives): Support

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports Senate Bill 159 which would add to the ability of Maryland's health occupations boards to protect patients from conflicts of interest that adversely influence prescribing practices. The bill would require each authorized prescriber who receives a financial gratuity or incentive from a pharmaceutical distributor or manufacturer to file a financial disclosure form with the health occupations board that licenses the authorized prescriber within 30 days after the financial gratuity or incentive is received. The information disclosed on the form may only be used to audit, investigate, or take disciplinary action against the authorized prescriber, and may not be made public. A health occupations board may impose a fine of up to \$1,000 per violation if an authorized prescriber willfully fails to file a financial disclosure form.

The editorial board of a leading medical journal, JAMA, has stated that a conflict of interest exists "when professional judgement concerning primary interest such as patient's welfare or validity of research *may be* influenced by a secondary interest such as financial gain." (italics added). See Conflicts of Interest Theme Issue, Audio Editorial Summary. JAMA. 2017;317(17):1707-1709. doi:10.1001/jama.2016.13108.

In an ethics opinion on the topic of financial gratuities and incentives, the American Medical Association (AMA) stated "[a]ny gifts accepted by physicians individually should primarily entail a benefit to patients and should not be of substantial value," and "[i]ndividual gifts of minimal value are permissible as long as the gifts are related to the physician's work (e.g., pens and notepads)," but otherwise warned against many types of

financial gratuities and incentives used by the pharmaceutical industry to influence prescribing practices. <https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinions-physicians-relationships-drug-companies-and-duty-assist-containing/2014-04>

With regard to the prescribing of all prescription drugs, we believe it is important for Maryland's health occupations boards to receive these reports in order to know when it is appropriate to audit and investigate a licensee's prescribing practices. The act of filing reports in and of itself seems to influence some prescribers to stop accepting financial gratuities or incentives, according to *Trends in Industry Payments to Medical Oncologists in the United States Since the Inception of the Open Payments Program, 2014 to 2019* :|

“In a study on industry payments received by oncologists following the [Physician Payments Sunshine Act], oncologists became less likely to receive industry payments, but the overall value of the payments increased. Over time, medical oncologists receiving lower-value payments (<\$10 000) accepted smaller amounts and those receiving higher-value payments (>\$10 000) accepted larger amounts. This indicates a consolidation of physicians receiving industry payments to a small number of oncologists accepting high payment values.

We would hope to learn that not many prescribers in Maryland accept financial gratuities and incentives with more than minimal value. If that is not the case, health occupations boards need to know and would have the disclosures in egregious cases, allowing appropriate action. We can see no good reason why any board would want to blind themselves to this data which would further their function of protecting patients in Maryland.

We ask the committee for a favorable report.

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