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March 2, 2022

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

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

Re: House Bill 969 (State Board of Dental Examiners – Membership, Training, and Disciplinary Processes – Revisions): Oppose

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) opposes House Bill 969 because two of the bill's provisions could place dental patients and the public at risk of serious harm. We believe that is not the intent of the bill's sponsors, but also believe it would be the effect of the bill if the provisions are not removed by amendments. As always, we will work with the sponsors as they wish.

1) The bill provides that a failure of the Board to issue an Order within a certain timeframe should default to a finding of no fault. Dentists who face disciplinary charges should *never* evade a full finding of the facts and the imposition of disciplinary actions, if any, by the Board whose mission is to protect dental patients and the public from the physical and financial harm that results from violations of the dental practice act, including substandard care, unprofessional conduct, or mental or physical incompetence.

We agree with the position stated by the Board on page 19 of the 2021 Senate Bill 836 report, which describes the challenges inherent in meeting deadlines that can be thwarted by uncooperative licensees and external requirements, i.e., antitrust reviews: “[I]t is the Board’s position that any bill that imposes disciplinary timeframes upon the Board will not be in the public’s best interest and may serve as an incentive to violators to ignore the Board’s lawful directives or to purposely postpone and hinder Board action. ... The combination of complexity of Board disciplinary cases, and the availability of staff are factors that influence the period of time that it takes for the Dental Board, or any health occupations board, to conclude disciplinary cases. ... Consideration must be given to the complexity of the case, the level of cooperation or non-cooperation of the respondent or their attorney, the number of dentists who must be

subpoenaed and/or interviewed, whether a license is summarily suspended, inspections of dental offices where infection control issues arise, whether and where a case goes to hearing, and the period for filing exceptions to proposed orders. These are factors that determine the length of time to conclude a case. **Although the Board strives to conclude all of its cases in a timely manner, in the end, proper investigation and protection of the public should be the primary consideration for all concerned.**” (emphasis added).

2) There is a provision in the bill that would require an outside attorney to provide training about the Board’s process. The Office of the Attorney General (OAG) conducts training for all new board members (not just the Dental Board) that includes training on the general disciplinary process and the Board’s role. We can foresee potential conflicts between the OAG’s advice and the private attorney/trainer’s advice that would undermine the effectiveness of the Board’s investigations and disciplinary proceedings.

We ask the committee for an unfavorable report.

cc: Sponsor