STATEMENT TO MICHIGAN HOUSE HEALTH POLICY COMMITTEE HEARING ON SB 826 12/2/20

SB 826 SHOULD NOT BE ENACTED UNTIL OR UNLESS THE MENTAL HEALTH CODE IS AMENDED TO 1.ESTABLISH CIVIL LIABILTY FOR WRONGFUL COMMITMENT CERTIFICATIONS & 2.EXPLICITLY PROTECT THE RIGHT TO REFUSE SPECIFIC PSYCHIATRIC DRUGS FOR SPECIFIC REASONS (330 MCL 1718 Consent)

The fact that most of the other states have done this is **very important** because it proves that depriving Mich citizens of this liberty and this justice is **unnecessary and unjustified**. Mich should follow the lead of other states and uphold our nation's most sacred values and principles before considering amendments which, otherwise, will result in even more harm to the health and rights of citizens.

States with a **malpractice or negligence** liability standard for clinical certifications include: Cal.WIC-5278,GC-856, Ill.405-5/6-103, N.Y., N.J., Tenn.33-3-901, Fla.394.459(10), N.C.122C-210.1, Ky.202A301, KS.59-29b80, N.D. 25-03.1-42, Del.16-5004

States with a **gross negligence or good faith** standard for these certifications include: Org.426.335(4), Tex.7-571.019(6), Penn.50-7114, Ohio 5122.34, Ind.12-26-2-6, Wis.51.15(11), Minn.253B23(4), S.D.27A-10-23, Mo.632,440, Ark.20-47-227, La.28-63, Miss.41-21-105, Ga.37-3-4, Idaho 66-341, Wash.71.05.120

The liberty and personal interests of those who must defend against a psychiatric commitment accusation are far too great to be without deterrence or a remedy for abuses or malpractice.

MH crises should be resolved while allowing the patient to choose what types of therapies or drugs work best for themselves and improves their quality of life(1206). The purpose of MH commitment is to resolve dangerousness crises in a manner that honors the individual's therapeutic preferences and choices(1700g,1712), dignity and safety, and in a least restrictive/harmful/intrusive way (1702). Recipients generally will take drugs which alleviate suffering, illness, disability and distress. However, when the drugs cause, rather than alleviate, these things, the recipient's right to refuse is backed up by criminal health care fraud law. If the drugs are to be used as chemical restraints to reduce dangerousness, it should be very short term only (1-3 days). The right to refuse psych drugs is clearly and repeatedly derived from constitutional, statutory, common, and administrative law, but is usually just ignored by doctors, judges, administrators, and MDHHS.

The key problem is that psychiatry's leading drug treatment for persons with SMI (APDs) are frequently harmful and counter-therapeutic – causing serious mental and physical illnesses and impairing mental functioning. The scholarly literature has revealed that APDs are neurotoxic, meaning they damage rather than heal the brain, and are toxic to all of the body's organ systems (note the Physicians Desk Reference). There is also tremendous bias on the part on doctors to conceal and not reveal the very unsafe and low quality of this entire class of drugs.

Most appellate courts have decided that the civilly committed do retain a right to refuse APDs, and yet most courts have overestimated the effectiveness and underestimated the harms of APDs, which are still being uncovered and discovered today. Those who administer MH Code commitments in Michigan should at least get into compliance with the standards enunciated in ROGERS V DEPT MENTAL HEALTH, 458 NE2d 308, DAVIS V HUBBARD, 506 FS 915, PEOPLE V MEDINA, 705 P2d 961, MEYERS V ALASKA, 138 P3 238.

Sincerely,

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December 2, 2020

The Honorable Hank Vaupel
Members of the House Health Policy Standing Committee Public Testimony
RE: HB 6325
State Capitol Building
Room 352
Lansing, MI 48933

Dear Chairman Vaupel and Members of the House Health Policy Standing Committee:

The Michigan Chapter of the American College of Cardiology (MCACC) opposes HB 6325 that would exempt certain cardiac catheterization procedures from Michigan Certificate of Need (CON) regulation if they are approved by Center for Medicare and Medicaid Services (CMS) for outpatient payment. The Michigan Chapter recommends that all cardiac catheterization procedures remain regulated by the Michigan CON program to ensure safety and quality.

The CON Review Standards for Cardiac Catheterization Services are currently being updated to allow for these procedures to be performed in Ambulatory Surgery Centers (ASCs). In fact, the CON Commission approved a Standards Advisory Committee (SAC) at their January 30th meeting and a SAC was appointed earlier this year made up of a 2/3 majority experts in this field. The Committee has met monthly since August and just two weeks ago adopted a motion to recommend to the Commission that the CON standards be updated to allow for these procedures in ASCs. The Committee is actively working on the specific provisions to be added to the Standards in order to ensure high quality, safety, and cost savings.

Addressing the CMS 2020 Outpatient Prospective Payment System (OPPS) rule revisions through a SAC will provide an opportunity to set detailed standards for performing these services in a non-hospital setting and retain the quality provisions in place today for these procedures and maintain an even playing field for all settings performing cardiac catheterizations.

The CON review standards contain many provisions for monitoring and improving quality, including a requirement that all facilities participate in the Blue Cross Blue Shield of Michigan Cardiovascular Consortium (BMC2). BMC2 coordinates multiple quality improvement initiatives related to PCI across Michigan including peer review, outcomes data and benchmarks and meetings that drive quality and standards within the state. Removing these outpatient procedures from CON regulation could result in a significant decrease in participation and potential adverse impact on quality across the state.

The CMS OPPS rule, would only pay for these procedures to be performed in a hospital or Ambulatory Surgery Center (ASC). In Michigan, in order to obtain ASC certification from CMS, a facility has to be licensed as a Freestanding Surgical Outpatient Facility (FSOF) which requires CON in and of itself. While HB 6325 would exempt these outpatient procedures from CON, it would not eliminate the requirement for cardiologists to obtain CON approval for the FSOF license they will need to obtain CMS certification as an ASC. Allowing the current SAC to address this issue rather than taking legislative action, will result in a comprehensive solution and consistent changes in both sets of standards, as needed.

Continuing to regulate these cardiac catheterization procedures under CON and allowing the CON process to work as designed will ensure that Michigan residents receive the right care, in the right place, at the right time. It is imperative that we support policy that ensures the safety and quality of cardiovascular care for Michigan residents.

Sincerely,

David Wohns, MD, MBA, FACC, FSCAI
President, Michigan Chapter American College of Cardiology

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Spectrum Health Medical Group
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December 2, 2020

To: House Health Policy Members

Re: Support of Senate Bill 0826

Chairman Vaupel and House Health Policy Members,

Thank you for this opportunity to write a letter of support for SB 0826 which would update the mental health code to include Physician Assistants as mental health professionals.

I have a unique perspective that others may not have provided. I am a parent to 3 amazing children. My two youngest are identical twin girls who are almost 15 and have a diagnosis of autism that was diagnosed in 2007. They are on the most severe end of the Autism Spectrum or what is now called Level 3. They are non-verbal, have severe anxiety plus a host of other medical issues, but what is most devastating is the unrelenting self-injury that one of the twins inflicts upon herself.

This self-injury has landed us in the ER a few times, once after she punched herself in the face and head unrelentingly, so much so that her eyes were swollen shut and her ear swelled with blood requiring an emergency procedure and a visit from the Psychiatrist. A car ride is distressing to her, but I am lucky in that I live in an area with access to numerous mental health professionals nearby that can help us navigate these issues.

I have access to mental health providers that are there to see us quickly if needed, or call if we need to change one of the numerous medications we have trialed, or help us work through the side effects of the medications. I cannot even imagine if I lived in a county that had no mental health provider to help us when we were in a crisis. I cannot even fathom driving in a car for 1-2 hours or more just for access to a mental health provider. I have spoken to other families in this situation and it is distressing and sometimes dangerous.

I am also a Physician Assistant that has been practicing within the inpatient hospital setting for over 20 years. Our patients are admitted to the hospital for a medical issue, but many of these problems are as a direct result of some sort of mental health crisis. In our ICU and medical wards, we frequently care for patients that have attempted suicide, had drug overdoses, substance abuse problems, and various other mental health crises.

Where I work, at the University of Michigan, some patients are admitted repeatedly for the same issue. We have teams of medical providers to care for not only their medical issues, but psychiatrists, psychologists, social workers, physician assistants, nurse practitioners and resident physicians in training to help manage their mental health needs while hospitalized. In this capacity Physician Assistants are defined in the Public Health Code and restraints are allowed to protect the patient and the staff. A plan is put in place and when they are discharged from the hospital one of the keys to success is close outpatient follow-up for both their medical and mental health needs. This close follow-up in turn reduces admissions.

We have patients that come to University of Michigan from all over the state including the upper peninsula and many rural areas of the lower peninsula. Many of these counties have no psychiatrist available and some have neither a psychiatrist nor psychologist. Access to mental health services is a huge barrier for these patients. There is not only the burden of finding a provider that would take them on as a patient, but the cost and time involved in traveling to these providers in other counties. Some of these patients cannot even leave their homes due to various health conditions.

By supporting SB 826 to update the mental health code by including physician assistants and APRNs, you are in turn increasing the supply of providers in these communities of need. Parents like me and my patients would be more willing to seek the care they need. Improving collaboration between mental health providers and medical providers is in the best interest of the patients. This would also reduce the burden of patient load on the psychiatrists that are practicing in the surrounding communities.

Thank you for the opportunity to share my experiences.

Sincerely,

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Michigan House of Representatives Health Policy Committee **December 2, 2020**
RE: Senate Bill 826 of 2020

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Michelle Roberts
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Chair Vaupel and Members of the Committee,

Thank you for considering our testimony on position on Senate Bill 826. The Autism Alliance of Michigan and Disability Rights Michigan are opposed to Senate Bill 826. Our organizations in conjunction with a number of other behavioral health and disability rights organizations around the state have worked to decrease the use of seclusion and restraint in Michigan.

Any expansion of authority to utilize these practices will not only increase their use but also signal that the State of Michigan approves of these practices in lieu of more modern and humane behavioral intervention methods.

If the legislature deems the bill necessary to increase available staffing for state psychiatric hospitals, then the Autism Alliance of Michigan and Disability Rights Michigan request that the following amendments are made to the bill.

1. Require nationally-recognized certification for the professionals added to PA 1974 258 via Senate Bill 826 in order to make decisions about hospitalization or seclusion and restraint decisions. Tie certification to hospital credentialing.
2. Require a minimum of 2000 hours of experience for the same named professionals.
3. Eliminate registered nurses from 1974 PA 258.
4. Add Michigan Department of Health and Human Services policy promulgation to reduce the use of seclusion and restraint in Michigan's psychiatric hospital system.
5. Require annual reporting of seclusion and restraint cases from Michigan psychiatric hospitals starting in 2021. Use 2021 as the baseline year from which to require annual reductions.

Thank you for your consideration on these changes. We and members of our respective teams are available to answer questions from the committee members.

Sincerely,

Colleen Allen
President and CEO, Autism Alliance of Michigan

Michelle Roberts
Executive Director, Disability Rights of Michigan

Melissa Sweet,

I'm writing in opposition to SB 826 as currently drafted.

The proposed changes of defining "Mental health professional" to include physician assistant, certified nurse specialist and clinical nurse specialist-certified with the qualifications of being an individual 'who is trained and experienced in the area of mental illness or developmental disabilities' greatly concerns me given that such health care workers have vastly varied depth and breadth of education and training and lack the medical expertise necessary to provide the highest quality care to meet the needs of patients in their time of need as they face the prospect of being placed into a psychiatric unit against their will or being physically restrained.

As a psychiatrist working in a community hospital, including the Emergency Department and psychiatric unit, in addition to a Community Mental Health agency, I frequently support medical staff and patients surrounding matters of Petitions and Clinical Certificates. I also work alongside and collaborate with advanced practice professionals as part of the broader health care team and greatly appreciate the care they provide.

In my greater than 20 years of experience, I've come to appreciate that patients who are subject of Petition for Hospitalization are placed in an extremely vulnerable position of facing the possibility of being hospitalized against their wishes, sometimes to a distant hospital far away from family if our local psychiatric unit is full (which is often the case). It requires a highly trained and skilled clinician to determine when a patient who is the subject of a Petition does <u>not</u> require inpatient psychiatric care and can be treated in the community and linked with local resources. With the proposed changes, undoubtedly there will be <u>increasing rates of unnecessary hospitalizations</u> which in addition to being wasteful and adversely impacting citizens, such will further exacerbate our state's psychiatric bed shortage and tax our already stressed health care system.

Additionally, I'm unclear as to the need to expand to workforce to perform Clinical Certificates. From my perspective in rural Northern Michigan and by interfacing with multiple Emergency Departments, there doesn't appear to be a shortage of physicians who can complete Clinical Certificates. If there is such a shortage, as the Covid-19 pandemic has demonstrated, the use of telemedicine can be used to expand and improve access to behavioral health care.

Parallels can be drawn to the proposed changes involving evaluation for seclusion and restraints of patients, who (again) are being examined at a time when they are most vulnerable. These complex and important patient care issues can be viewed through the lens of protecting our citizen's civil rights. In their time of greatest need, our citizens deserve the highest quality health care available to them.

Thank you for your time and considerations.

Respectfully,

Curtis Cummins, M.D.

Clinical Assistant Professor, Michigan State University, College of Human Medicine

Munson Medical Center – Munson Healthcare

Northern Lakes Community Mental Health Authority

Traverse City, MI

10/15/2020