



State of Vermont
Office of the Secretary of State
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary
Kevin Rushing, Director

April 5, 2023

**To: Rep. Lori Houghton, Chair
House Committee on Health Care**

**From: S. Lauren Hibbert, Deputy Secretary of State
Lauren Layman, General Counsel, Office of Professional Regulation**

**Re: S. 37 – An act relating to access to legally protected health care activity and
regulation of health care workers**

Dear Committee,

Thank you for the opportunity to provide testimony on S. 37. The Office of Professional Regulation (OPR) and the Secretary of State strongly support the goals of S. 37, specifically ensuring that Vermont's licensed health care professionals will not be professionally disciplined in Vermont for engaging in legally protected health care activities.

OPR had some suggestions for minor corrections to the initial version of S. 37 but many of those concerns were addressed prior to the bill passing the Senate. We do have a couple of additional suggestions to help clarify the intent of the bill and the administration of the law.

Section 6: Amending 3 V.S.A. § 129a, Unprofessional Conduct

This section would prohibit OPR and relevant professional boards from

1. Taking disciplinary action against a health care provider, or
2. Denying a qualified health care provider's application for a license in Vermont

based *solely* on

- A. The health care provider providing or assisting in the provision of legally protected health care activities, or

- B. On a criminal or civil action or disciplinary action taken by another state’s professional licensing board based solely on the health care provider providing or assisting in the provision of a legally protected health care activity.

Section 6, subpart 2, goes on to define the term “health care provider” and “legally protected health care activity.”

Suggestions:

§ 129a(f)(1)(B):

OPR suggests amending part (f)(1)(B) of this section to clarify whether the prohibitions applies only to “criminal or civil actions...taken by another state’s professional licensing board...” or if the prohibitions applies more generally to any “criminal or civil actions” against a health care provider based solely on the provision or assistance with providing a legally protected health care activity. That is, as written, it is unclear if the phrase “taken by another state’s professional board” in (f)(1)(B) applies only to disciplinary actions or also applies to “criminal or civil action[s]” taken by other bodies of another state, such as the courts.

§ 129a(f)(2)(A):

OPR apologizes for not noting this when testifying in the Senate. Upon a closer review of the definition of “health care provider” in 18 V.S.A. § 9496, it is unclear whether mental health professionals are included in that definition. That statutory definition provides:

“Health care provider” means a person, partnership, or corporation, including a health care facility, that is licensed, certified, or otherwise authorized by law to provide professional health care services in this State to an individual during that individual’s medical care, treatment, or confinement.

OPR supports including mental health professionals in the protections offered by S. 37, as these providers may be integral in the provision, aiding in the provision of, or aiding in the exercise of reproductive health care rights and gender-affirming care. Inclusion of mental health providers could be addressed by adding a provision to the end of Section 129a(f)(2)(A), such as “and includes mental health providers.”

Section 10: Board of Medical Practice; Office of Professional Regulation; Interstate Compacts; Report

OPR appreciates the opportunity to provide a report on the impact of S. 37 on compacts, and we are happy to work with the Board of Medical Practice. OPR does have concerns about the November 2024 deadline for submitting the report, however. We are in the beginning stages of a large study on mental health regulation in Vermont, requested last year in Act 117. That report is due on December 15, 2024. OPR has been asked to complete reports on massage therapy licensing, the nurse licensure compact, and optometry by the end of this year or next year, as well.

Alongside the (potential) implementation of four new compacts and our other work, we do not believe we will have the resources to do a comprehensive report on compacts and S. 37 by the end of 2024. We could do this work by November 2025, however.

Section 10A: 26 V.S.A. chapter 56 is amended to read:

Subchapter 2. Interstate Compacts; Health Care Provider Compacts

§ 3071. Health Care Provider Compacts; Direction to Vermont Representatives

This section expresses the intent of the General Assembly regarding interstate occupational compacts, disciplinary actions, and legally protected health care activities. OPR fully supports the intent and directive expressed in this section. OPR led the effort to develop adequate protections for our state licensees and laws in the Interstate Medical Licensure Compact and are prepared and eager to do the same for other compacts.

OPR does have several minor text corrections and a question regarding the language in this section.

- First, we are wondering about the reason for using the terms “gender-affirming health care services” and “reproductive health care services” in this section rather than using the term “legally protected health care activities”.

Subpart (b) of this section refers to disciplinary actions taken against a licensee solely for providing or assisting in the provision of gender-affirming or reproductive health care services. Section 6 of S. 37, which also addresses disciplinary action against licensees, refers to such actions being taken against a license solely for providing or assisting in the provision of “legally protected health care services.” Unless there is a reason to distinguish between the two sections that both address discipline and unprofessional conduct, OPR recommends using consistent terms in both sections.

- In subpart (a) of this section, in the second full sentence, OPR suggests revising the phrase in italics to read,

“...and ~~applicants~~ licensees from other members states seeking to practice or practicing a profession in Vermont pursuant to an interstate compact...”

The compact disciplinary provisions that are addressed in this section do not impact *applicants* for licenses but are a concern for licensed professionals. For this reason, OPR suggests using the term “licensees” rather than “applicants.”

Additionally, OPR suggests expanding the expressed intent of this section to include those licensees from other states already practicing in Vermont, rather than limiting the provision to just those seeking to practice here. To address this, OPR suggests adding “or practicing” to the sentence.

- Lastly, in subpart (b), Vermont’s representative or delegate to a compact commission is directed to “seek an amendment or exception to the compact or agreement language, rules, or bylaws, as necessary...” OPR recommends revising this section as follows:

“Vermont’s representative or delegate for an interstate compact or agreement related to health care shall seek a compact rule or an amendment or exception to the compact or agreement language, rules, or bylaws, as necessary...”

The occupational compacts the state has adopted to date and those that the General Assembly is considering this year are generally administered through rules adopted by the compact commission. In turn, any interpretation of or changes to the compact or directions to member states are typically included in the adopted rules. This may change or a different approach to addressing concerns regarding discipline may arise. For that reason, OPR recommends keeping the language regarding “an amendment or exception” in this section and adding the option for addressing this issue through the adoption of a compact rule.

Thank you again for the opportunity to provide testimony on this essential legislation.