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To : Chair Houghton and Members of the House Health Care Committee
From: Jessa Barnard, Vermont Medical Society, jbarnard@vtmd.org
Date: April 4, 2023
RE: Support for S. 37, An act relating to access to legally protected health care activity and regulation of health care providers

Good afternoon. Thank you for the invitation to testify. My name is Jessa Barnard and I am the Executive Director of the Vermont Medical Society. I am here to testify not only on behalf of the Vermont Medical Society but also the Vermont Academy of Family Physicians, American Academy of Pediatrics Vermont Chapter, and Vermont Psychiatric Association in support of H. 89 as passed the House. Our organizations collectively represent approximately three thousand physicians in Vermont. Our members provide primary care and specialty health care services in hospital-based practices, Federally Qualified Health Centers and independent practices, including the full range of reproductive and gender affirming health care services.

Our members strongly support the findings of leading national medical associations that comprehensive reproductive health services, including access to contraception and abortion, and the provision of gender-affirming care, are the standard of care in medicine.¹ Based on these evidence-based guidelines, the Vermont Medical Society has established policy positions supporting access to contraception, abortion and gender-affirmative care.²

You are well aware that such services are now under attack in a number of other states. About half of U.S. states have already or are expected (pending legislative or judicial actions) to enact abortion bans or other limits on the procedure.³ Similarly, more than a third of the 150,000 transgender youth 13 to 17 years of age in the United States live in the 15 states that have restricted or banned access to best practice medical care for transgender youth or are considering legislation to do so.⁴ These laws vary widely by state but can carry significant criminal penalties

¹ <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy>; <https://www.endocrine.org/clinical-practice-guidelines/gender-dysphoria-gender-incongruence>; <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for>; see also Erica Gibson, MD, testimony offered to Senate Health & Welfare Committee at <https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Health%20and%20Welfare/Bills/S.37/Drafts,%20Amendments,%20and%20Legal%20Documents/S.37~Erica%20Gibson~Erica%20Gibson%20Written%20Testimony~2-8-2023.pdf>

²

https://vtmd.org/client_media/files/vms_resolutions/2019%20Codifying%20Protection%20for%20Womens%20Reproductive%20Rights_Final.pdf; <https://vermontbiz.com/news/2021/april/16/medical-leaders-call-scott-and-lawmakers-denounce-restrictions-gender-care>

³ <https://www.kff.org/other/state-indicator/abortion-policy-tracker>; see also <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>

⁴ See also <https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/>; and <https://translegislation.com/>

for health care professionals, including decades of prison time and tens of thousands of dollars of fines. New forms of civil liability are also a reality, as exemplified by Texas' ban on abortions after 6 weeks, SB 8, which allows any private citizen to sue anyone who performs or induces an abortion or "aids and abets" the performance of an abortion.⁵

H. 89, which the House passed earlier this session, addresses ways to reduce health care professional civil and criminal liability. However, risk of professional disciplinary action is undoubtedly higher. Any individual can file a licensing complaint, thereby requiring a licensing body to investigate. We already have an example of the Attorney General in Indiana opening an investigation into a physician who performed an abortion on a minor, alleging that the physician did not properly file a child abuse complaint.⁶ The Florida Board of Medical Practice and Board of Osteopathic Medicine in February finalized rules that define providing gender affirming services to minors as against the standard of care, leading to investigations or discipline in any instances of providing care against their policy – despite this being contrary to national and international best practice guidelines for care.⁷

Given the tactics of laws like SB 8 and regulations like those in Florida, legal risks and professional discipline now attach to health care professionals caring for patients who travel for care or seek telemedicine services. Based on this, in September 2022, the VMS Board adopted a policy in support of "shield laws" that would protect Vermont health care professionals who provide reproductive or gender affirming health care services.⁸

We worked with members of the Senate Health and Welfare Committee and are in support of the language and approaches being proposed in S. 37 and ask for their adoption. Of utmost importance to protecting access to care are the provisions regarding:

- Definitions of "Legally Protected Health Care Activity" that are consistent between S. 37 and H. 89, are inclusive of the broad range of evidenced-based health care services and distinguish clinical services from insurance coverage; we also support the current wording of not protecting activity that would be subject to legal or administrative action in this state – making it clear that discipline or other causes of action could still move forward if they did not meet Vermont law or standards of practice;
- Not allowing a clinician's malpractice coverage to be dropped or rates increased for engaging in legally protected health care activity;
- Not subjecting a clinician to disciplinary action based on providing legally protected health care activities;
- Further examining the implications of the Interstate Medical Licensing Compact on licensees; and
- Protecting health care data from disclosure in legal proceedings.

We will note things that this bill does not change include the standard of practice in Vermont, what health care services are protected by Vermont law, or which services minors can consent to.

Thank you for taking up this important legislation and we ask for your support in moving the bill forward. Please reach out to me at jbarnard@vtmd.org or 802-917-1460 if we can answer further questions.

⁵ <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00008F.pdf>

⁶ <https://www.washingtonpost.com/politics/2022/07/27/abortion-doctor-girl-rape-caitlin-bernard-investigation/>

⁷ <https://wusfnews.wusf.usf.edu/health-news-florida/2023-02-10/florida-boards-of-medicine-confirm-ban-on-gender-affirming-care-for-transgender-youth>

⁸ https://vtmd.org/client_media/files/2022%20Cross%20State%20Health%20Care%20Services.pdf