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To : Chair Rep. Marin LaLonde and Members of the House Judiciary Committee
From: Jessa Barnard, Vermont Medical Society, jbarnard@vtmd.org
Date: January 26, 2023
RE: Support for H. 89, An Act Relating to Civil and Criminal Procedures Concerning Legally Protected Health Care Activity

Good morning. Thank you for the invitation to testify to you this morning. 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. 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-affirmative 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 for health care professionals, including decades of prison time and tens of thousands of dollars of fines. New forms of civil liability is 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

¹ <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy>; <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for>

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/>

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

You have just heard from Dr. Gibson some examples of the physical, emotional and professional toll that these laws are having on health care professionals and their patients. Given these realities, we know that many patients already are and will continue to need to travel outside their home state to obtain necessary health care services. We also know that given the tactics of laws like SB 8, legal risks now attach to health care professionals caring for such patients.

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. The policy statement reads:

RESOLVED, that the Vermont Medical Society will coordinate with state lawmakers, the administration, the Attorney General and other policy makers to implement state protections for patients seeking and clinicians providing services that are evidence-based and standard of care in Vermont but are limited or banned in other jurisdictions, including but not limited to comprehensive reproductive health care such as contraception and abortion, and gender-affirmative care, such as:

- **Protection from out-of-state prosecution and extradition;**
- **Protection from enforcement of civil judgments, subpoenas or warrants;**
- **Protection from disciplinary actions by medical boards and in-state malpractice insurance companies; and**
- **Protections for medical records data and access to telehealth services.**

We have been analyzing shield laws from neighboring states such as New York and Massachusetts, and support the approach taken in H. 89, largely modeled off of Massachusetts. Creating a new cause of action regarding tortious interference with legally protected health care activity may be particularly important as a deterrent to intimidating legal tactics against health care professionals or to recoup legal expenses. Our members also strongly support Section 8, extending address protections. In the words of an OBGYN member who provides abortion services:

I absolutely think they should be considering address confidentiality protections for clinicians/employees/etc. I was trained early on to never put my home address on any medical license applications because they could be made publicly available, I know many providers who bought their houses through a trust to avoid property record disclosure. I think any efforts to reduce the private addresses of healthcare providers in any field is absolutely critical to supporting and protecting the workforce.

Thank you for taking up this important legislation and we look forward to continuing to work with the committee as you develop H. 89. Please reach out to me at jbarnard@vtmd.org or 802-917-1460 if we can answer further questions.