



To: Senate Health & Welfare Committee
From: Jessa Barnard, Vermont Medical Society, jbarnard@vtmd.org
Date: March 27, 2024
RE: Support for H. 72 – Overdose Prevention Centers

Thank you for the invitation to testify this morning regarding H. 72. The Vermont Medical Society (VMS) is the State's largest physician and physician assistance membership association, representing over 2900 members. After discussing the benefits, risks and current evidence, **the Vermont Medical Society Board took a position in Spring 2023 in favor of supporting overdose prevention sites as part of a comprehensive harm reduction strategy** and supported further exploration of the feasibility of establishing sites in Vermont.

The American Medical Association also supports OPCs. In its 2023 Overdose Epidemic Report¹ the AMA recommended as a key strategy increased efforts to expand sterile needle and syringe exchange services programs, implement pilot overdose prevention sites, decriminalize drug checking technologies (e.g., fentanyl test strips), and further enhance Good Samaritan laws to protect individuals who seek care for those who overdose and those who overdose.

Should such centers move forward in Vermont, we would want them to be successful. As a part of this, those working or volunteering for OPCs must be shielded from both criminal and civil liability.

Massachusetts in December 2023 completed an Overdose Prevention Center Feasibility Report.² The report concludes that: "individuals and entities [participating in OPCs] face significant exposure to both civil and criminal liability as well as risk to their professional licensure....Absent state legislative criminal and civil liability protections, those participating in, funding, working at and operating an OPC are at significant criminal legal risk, with both state and local authorities having the ability to charge, arrest and convict for drug offenses or for conspiracy to violate the state Controlled Substances Act."

The report adds that professional licensure boards generally prohibit by regulation either committing or aiding a person in performing any act prohibited by applicable federal and state law or regulation (e.g., using illicit substances) and so professionals should also be protected from disciplinary action.

This is similar in Vermont, where state law defines as unprofessional conduct for a licensee of the Board of Medical Practice (26 V.S.A. § 1354)³:

(27) failure to comply with provisions of federal statutes or regulations, or the statutes or rules of this or any other state, governing the practice of medicine or surgery; and

¹ <https://www.ama-assn.org/system/files/ama-overdose-epidemic-report.pdf>.

² <https://www.mass.gov/doc/overdose-prevention-center-feasibility-report/download>

³ Similar language is present at 3 V.S.A. § 129a for licensees of OPR.

(30) conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession

It also is not farfetched to think that a health care provider could also be at risk of disciplinary action or civil liability for allowing, watching and even supporting a member of the community to take substances knowing that they could lead to an overdose or negative health consequence – while that is the very point of an OPC, an upset community member, family member or even client could at least file a complaint on this basis.

Therefore, the Vermont Medical Society strongly recommends that the liability protections of the bill be strengthened as follows:

This language is based on:

- Rhode Island Liability Protections (§21-12.10-4)
- Vermont Unused Drug Repository limitations on liability (8 V.S.A. § 4673)
- Draft amendments to Massachusetts Overdose Prevention Center statute (available upon request)

(j)(1) The following persons shall not be cited, arrested, charged or prosecuted for unlawful possession of a regulated drug in violation of this chapter or subject to the property forfeiture provisions of this chapter; or for attempting, aiding and abetting, or conspiracy to commit a violation of any of those sections; nor have their property subject to seizure or forfeiture, including of data, records, assets or property; nor be subject to any civil liability or administrative penalty including disciplinary action by a professional licensing board, credentialing restriction, contractual liability, or medical staff or other employment action; nor be denied any right or privilege for approval of, operation of or for participation in or with an overdose prevention center that has been approved pursuant to subsection (m) of this section and that is acting in the good faith provision of overdose prevention services in accordance with the guidelines established pursuant to subsection (l) of this section:

(A) a person using the services of an overdose prevention center;

(B) a staff member, operator ~~or~~ administrator, or director of an overdose prevention center, including a health care professional, manager, employee, board member, service provider or volunteer; or

(C) a property owner, lessor or sub-lessor on the property at which an ~~who owns real property at which an~~ overdose prevention center is located and operates;

(D) the entity operating the overdose prevention center; and

(E) a state or municipal employee acting within the course and scope of their employment. ;

Entering or exiting an Overdose Prevention Center cannot serve as the basis for, or a fact contributing to the existence of, reasonable suspicion or probable cause to conduct a search or seizure.

Thank you for considering our feedback and please reach out if VMS can be of further assistance.