



State of Vermont
Office of the Secretary of State

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To: Sen. Virginia Lyons, Chair
Senate Committee on Health and Welfare

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 does have some suggestions for clarifying and streamlining some provisions of the bill and for ensuring compliance with existing laws. Our suggestions are below. We look forward to working with legislative counsel, the Committee, and other stakeholders to review and, where possible, address these suggestions.

Section 1: Adding 1 V.S.A. § 150(b)(2)

- *OPR supports clarity in defining “legally protected health care activities” and wants to ensure awareness of the potential ambiguity stemming from reliance on “standards of practice”.*
 - There are times when the professional standard of care is not clear, particularly in fields that are innovating and evolving. For example, it can sometimes be challenging to determine whether new technologies, practices, or uses of medication are on the margins of current standards of practice or are outside that standard of practice.

- By eliminating the term “standard of practice” from the definition of “legally protected health care activity,” the House Judiciary Committee amendments to H. 89 eliminated the ambiguity posed by using the standard of practice as the measure of whether conduct constitutes “legally protected health care activity.”
- OPR needs more time to understand the amendments in H. 89 and the implications.

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

- *OPR suggests streamlining the language for parts (f)(1) and (2) by combining the two subsections.*
 - Section 129a of Title 3 applies to applicants and people who later become applicants, in addition to current licensees. In turn, sections (f)(1) and (f)(2) of S. 37 could be combined into one subsection of 3 V.S.A. § 129a.
- *OPR suggests limiting the protection to those disciplinary actions taken by another state’s board based “solely” on the provision or assistance with a legally protected health care activity.*
 - OPR shares the Board of Medical Practice’s concerns about prohibiting any adverse actions against applicants based on disciplinary action taken by another state’s licensing board that “arise from” the provision of legally protected health care activity.

Section 8: Adding 9 V.S.A. chapter 63, subchapter 11

- *OPR suggests including the following language in Section 8 of S. 37 regarding Pregnancy Services Center Fraud:*
 - “The health care or medical supervisor of a crisis pregnancy center shall be responsible, legally and professionally, for the activities of the staff performing duties for and on behalf of the pregnancy services center. The health care or medical supervisor shall ensure that the staff of the pregnancy services center, including the health care or medical supervisor, maintains a level of supervision, training, and practice consistent with legal requirements established under Vermont law, including those set forth in Title 26, and professional standards of practice.”

Section 10

- *OPR can collaborate with the Board of Medical Practice to provide a report on the IMLC. The Office encourages ongoing attention to the legal implications of such reports, as there has possibly been lawsuits filed against other states due to the outcomes of those state’s reports on the IMLC.*
- OPR also wishes to assure members that the Office is aware of and very attentive to provisions in compacts requiring member state to “reciprocally” discipline compact licensees (i.e., revoke a remote, Vermont state license based on a home state’s discipline of that licensee). This has become of heightened concern after the Dobbs ruling because OPR may find itself in a position of having to discipline (i.e., revoke) a

compact licensee's license to practice in Vermont based on laws in other states that are contradictory to our state's values.

- OPR was a participant in the development of rules addressing this issue in the IMLC. We intend to be participants in ongoing discussions with the IMLC and other compact commissions to ensure adequate protections for our state licensees and laws.
- Regardless of whether a report is included in S. 37, OPR is happy to provide ongoing updates to the Committee regarding developments in compacts to address the reciprocal discipline concerns.

Section 11: Adding 26 V.S.A. chapter 26, subchapter 7, Emergency Contraception

- § 2078

- § 2078(a)-(c)

- *OPR suggests expanding the existing state protocol process for clinical pharmacists to include emergency contraception.*

- Existing pharmacy statutes (26 V.S.A. § 2023(b)(2)) authorize the Commissioner of Health, after consultation with the Director of OPR, to approve state protocols authorizing licensed pharmacists to prescribe, order, and dispense a list of medications, including self-administered hormonal contraceptives.

- This process has been effective since it was implemented. Currently, there are 4 approved state protocols that Commissioner Levine has approved (naloxone, influenza vaccines, self-administered hormonal contraceptives, and tobacco cessation products).

- Prescription emergency contraceptives could easily be integrated into this existing process list of medications that pharmacists are authorized to prescribe, order, and administer.

- S. 37 proposes the Vermont Department of Health and the Commissioner of Health or a designated physician issue statewide standing orders authorizing Vermont-licensed pharmacists to dispense prescription emergency contraceptives. The standing order would serve as the prescription for the emergency contraception. Pharmacists would then be permitted to dispense the emergency contraception pursuant to the standing order.

- *If the current standing order provisions in S. 37 are maintained, OPR asks for clarification on the distinction between §2078 (a) and § 2078(b).*

- § 2078(d)

- This section refers to the collection and reporting of data by “pharmacists”. OPR recommends changing this to “pharmacies,” as pharmacies order and store

medications while the pharmacist dispenses the medications from the pharmacies' supplies.

- § 2078(e)
 - *OPR suggests deleting this section as the protection provided is already provided in Section 6(f) of S. 37.*
 - As licensees under OPR's jurisdiction, licensed pharmacists are governed by 3 V.S.A. § 129a. In turn, Section 6(f) of S. 37 (amending 3 V.S.A. § 129a to prohibit professional disciplinary action against health care providers solely for providing or assisting in the provision of legally protected health care activities) already includes protection for licensed pharmacists against professional discipline stemming solely from legally protected health care activities.
 - *If this section is retained, OPR suggests amending the phrase "related to the use or administration of" to "solely from dispensing".*
 - OPR prefers the protections provided to be limited to protection for disciplinary action stemming solely from the provision of legally protected health care activities as "related to" could include unprofessional conduct that the legislation is not intending to protect from professional discipline.
 - Additionally, if a standing order is used to authorize pharmacists to dispense emergency contraceptives, the pharmacists will not be engaged in the use or administration of the emergency contraception. Instead, the protection should be for the dispensing of the medications.
- § 2079
 - *OPR does not object to permitting licensed retail or institutional drug outlets to make over-the-counter emergency contraception and other drugs available from a vending machine. We believe this is permitted under current law.*
 - 26 V.S.A. § 2032(h) permits retail drug outlets to sell and distribute OTC medications regardless of the means of doing so.
 - "It shall be lawful for a drug outlet licensed under this chapter to sell and distribute nonprescription drugs. Drug outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy."
 - *OPR suggests revising 26 V.S.A. § 2079(b) from requiring ("shall") the Board of Pharmacy to adopt rules regarding vending machine dispensing of OTC medications to permitting ("may") the Board to adopt rules.*
 - The needs for regulation would be minimal and likely already applicable through the FDA (e.g., compliance with manufacturing requirements and labeling).
 - Before adopting this provision, existing statutes will need to be revised or repealed. Specifically, 26 V.S.A. § 2032(h) prohibits the Board of Pharmacy from adopting

any rules “apply[ing] to or interfere[ing] with the sale and distribution of [OTC] medicines.”

Section 14: Amending 18 V.S.A. § 1881

- § 1881(d)(3)
 - *OPR suggests including the Director of OPR in this exception and, in doing so, permit OPR to access communications and information described in the subsection.*
 - OPR investigates complaints regarding the practice of 27 health care professions. Our need to access documents relevant to the investigation of complaints is comparable to the need of the Board of Medical Practice.