

Greetings Sen Sears,

Hope this email finds you well. My name is Jeff Hochberg. I am the Executive Director of the Smilin Steve Pharmacy Group (6 of the 16 remaining Independent pharmacies left in the State). For over the last decade I have advocated on behalf of pharmacies and pharmacists in this State, serving as the President of the Vermont Retail Druggists, our lobbying group founded in the 80's. Sadly, the V.R.D. is no more for most members have closed their stores. I would be lying to you if I were to deny similar contemplations. Pharmacy is at a crossroads. The National Community Pharmacy Association recently reported that an estimated 25% of independent pharmacies will close their doors this year. This sadly, is unavoidable at this point. Access and Health Care Delivery, which I opine squarely rests on Pharmacies, is going to fail. I think it's fair to say that this truth is becoming more widely accepted. However, with failure comes the push to understand. H 233 represents acknowledgement of our decades long pursuit to convince the State that it needs to "look under the hood" in pharmacy as there is much to discuss, particularly with \$\$\$\$; and our DFR is ready and willing to roll up its sleeves.

I was informed by Rep. Cordes that you had a question regarding the "private right of action" amendment proposed in H 233. This amendment is needed because as it stands today, Pharmacies in Vermont have no recourse to act on violations within this industry. I've personally reported suspicious activity to the DFR only to be told that I, as a pharmacy business entity, am not a consumer and therefore cannot use the complaint portal. The Office of the Attorney General told me the same. In fact, when my family and I took the fight to federal court, see High Mountain Corporation v MVP HealthCare here attached, the Judge on the case, called attention to a lack of clear statutory right of action in their denial of the defendants motion to dismiss:

#### **V. Fundamental Issue of Vermont Insurance Regulation**

Finally, MVP argues that this action "raises a fundamental issue of the Vermont DFR's regulation of insurance that is best left to the state agency that is charged with its enforcement." (Doc. 8 at 21.) From the court's perspective, it was the Vermont legislature, not the administrative agency, which addressed the fundamental issue. That issue was resolved in general terms when § 4089j was enacted. This case presents interstitial issues of statutory interpretation, including consideration of the guidance provided by the agency in HCA Bulletin 114, which are commonly the province of the courts. It also presents an issue not raised in the motion to dismiss about the availability of a private civil remedy which has proven troublesome in other cases enforcing "any willing provider" statutes. But these are not reasons to step down in favor of an unidentified administrative proceeding.

We need a clear private right of action so that pharmacies can continue to fight for healthcare transparency, accessibility, and accountability.

If you would like to discuss in more depth, please feel free to reach out.

Best,

Jeff