



**VERMONT DEPARTMENT OF HEALTH
Board of Medical Practice**

DAVID K. HERLIHY

Email: david.herlihy@state.vt.us

Telephone: :802-657-4220

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Senate Committee on Health and Welfare
Vermont State House, Room 17
Montpelier, VT 05633-5301

Re: H.123, An act relating to Lyme disease and other tick-borne illnesses

To the Committee:

Thank you for the opportunity to submit additional testimony regarding the position of the Board of Medical Practice on H.123.

First, we will provide a written response to a question posed by Senator McCormack at the March 21 hearing on the bill. He asked whether the existence of an informed consent document resolves the issue for the Board of Medical Practice, in light of the fact that some patients want this treatment. I provided a brief response from the corner. This is an important question, and the answer bears repeating. While an informed consent may be the end of the analysis for many disputes between physician and patient, the Board's focus is necessarily much broader. As much as the Board is concerned with the care given to an individual complainant, the Board is also very focused on the public as a whole and whether a licensee might pose a danger to the public, not whether a patient had agreed to receive care that is not generally recognized as appropriate by the medical community.

Second, the Board remains committed to the position that the legislative process is not the appropriate means to resolve disputes about the standard of care. During the testimony by Dr. Phillips, the contrast between the legislative process and the Board's process was stark. Dr. Phillips seemed quite impressive during his presentation, but a twenty-minute presentation by an expert cannot compare to the process by which expert evidence is processed by the Board. There were no difficult questions put to him, and there was no chance for anyone to prepare in advance to ask him difficult questions.

In a contested matter before the Board that presents a dispute about the appropriate standard of care, each side has the opportunity to offer expert opinion. Importantly, there is a process by which expert opinions must be shared in advance, and there is opportunity for each side to probe the basis for an opinion with assistance by one's own expert. It is only after each side has had the chance to fully explore the basis for the expert's opinion that the evidence is presented to the members who must make a determination, and that presentation is subject to challenge and testing by the other side.

Between the pre-hearing process and the hearing in front of members, the process can take days. In the end, the Board process promotes a deeper exploration of the evidence, and the evidence is put before Board members, a majority of whom have a professional and scientific background. The legislative process is an excellent means to make many important policy decisions, but it is not the best arena in which to make what is essentially a judgment based on science.

In closing, the Board remains deeply appreciative for the hard work done in the House, especially the House Health Care Committee. We also deeply appreciate the opportunity that was given to participate in the process. Despite the effort that was put in, this remains a flawed bill that the Board cannot support. It is not appropriate for the Legislature to set the standard of care using the legislative

process. Determination of the standard of care should be left to the Board of Medical Practice using the process outlined above.

Respectfully submitted on behalf of the Board,

A handwritten signature in black ink, appearing to read 'DK Herlihy', followed by a long horizontal line extending to the right.

David K. Herlihy,
Executive Director
Board of Medical Practice