

VERMONT MEDICAL SOCIETY

Date: March 3, 2017
To: House Government Operations Committee
From: Jessa Barnard, VMS Vice President for Policy
Re: H. 111 – Section 15 (Penalties)

Thank you for allowing the Vermont Medical Society to testify to you today regarding H.111, An Act Relating to Vital Records. The Vermont Medical Society is the state's largest physician membership organization, representing over 2000 physicians, medical residents and medical students across specialties and geographic and practice location. Our members are frequently in the position of completing birth and death certificates and, as such, have been following the changes made to those processes contained in H. 111.

Our testimony to you today is largely focused on Section 15, regarding penalties, as it applies to the sections on completing birth and death certificates. (Section numbers refer to those used in Draft No. 1.1). As you know, existing law imposes a flat \$5 fine for failing to comply with the birth certificate requirements and a flat \$100 fine for failing to furnish a certificate of death within 24 hours. Under H.111, the penalty for failing to comply with the birth or death certificate requirements (found in Sections 27 and 60) change from a flat fine to the penalty structure created in Section 15.

Our concern with Section 15 is the mental state needed to be found in violation of the statute's requirements. In a number of places, Section 15 uses the term "knowingly:" a person shall not "knowingly make a false statement or knowingly supply false information," ((a)(1)(A)) "knowingly refuse to provide information," (b)(1)(A) or "knowingly neglect or violate any of the provisions of this part or knowingly refuse to perform any of the duties imposed." (b)(1)(B).

"Knowingly" is term that seems overbroad in this context and is interpreted differently in various statutory schemes. For example, in the context of the false claims act applicable to submitting insurance claims to Medicaid, "knowing" means having actual knowledge of the information submitted but does not require an intent to defraud. In the context of H. 111, "knowing" under (a)(1)(A) could mean that the health care provider filling out the birth or death certificate has actual knowledge of the fact in question (such as the cause of death listed) but did *not* actually know that the fact provided was false or intend the information to be false. Similarly, under (b)(1)(A) a provider may have knowledge of the fact that he or she did not submit a birth or death certificate but may not have believed that this requirement applied to him or her based on the given facts of the situation. Imposing a \$10,000 or \$1,000 fine on a provider in those situations would be inappropriate and a huge jump from a \$5 or \$100 fine. The \$250 fine under (d) for any person "who fails to perform any duty imposed or violates a prohibition under this part" would seem more appropriate.

In light of these concerns, VMS recommends that the Committee either:

- (1) Specify in Sections 27 and 60 that violations of the duty to complete birth certificates and death certificates subject providers only to the penalties found in Section 15 (d) (a civil administrative penalty of not more than \$250) or
- (2) **Add a requirement that violations of Section 15 be made “knowingly and intentionally.”** This phrase is found in many other areas of state statute, for example, under public meeting law: “a person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter. . . shall be fined not more than \$500,” (1 VSA § 314) and campaign finance law: “a person who knowingly and intentionally violates a provision of subchapter 2,3, or 4 of this chapter shall be fined not more than \$1,000.” (17 VSA § 2903). This change would also appear to be consistent with the statutory scheme, which envisions under Sec. 15 (d) the ability to impose fines of up to \$250 for persons who fail to perform any duty or violate a provision of the law – suggesting the higher penalties are for intentional violations.

Specifically, VMS requests that Section 15 be amended as follows:

(a)(1) A person shall not:

(A) knowingly **and intentionally** make a false statement, or **knowingly and intentionally** supply false information intending that such information be used, in connection with a vital record;

...

(b)(1) A person shall not:

(A) knowingly **and intentionally** refuse to provide information required by this part or by rules adopted to carry out its purposes; or

(B) knowingly **and intentionally** neglect or violate any of the provisions of this part or knowingly **and intentionally** refuse to perform any of the duties imposed upon him or her by this part.

On behalf of Vermont’s physicians, thank you for considering these suggestions.