Vermont Board of Medical Practice position on H.116/S.128 established on March 20, 2019, by motion approved on a 9-0 vote.

A. General Concept.

The Board supports revision of the laws (and subsequently rules) that define the terms under which physician assistants (PAs) practice, in ways that relax the existing, formal system of supervision by and liability of physicians for the practice of PAs. The Board does not support the bill as introduced because it is seen as moving too close to independent practice in several respects. Specific concerns about the language and suggested revisions that would make the bill acceptable follow.

B. Transition from Delegation & Supervision to a System of Practice Agreements / Privilege-Granting Documents

The broadest concept presented in the bill is a movement away from the existing framework of delegation agreements and documented physician supervision, and replacement with a physician/PA relationship defined by either a practice agreement or a privileging document, depending on the setting in which the PA works. The Board supports that concept, and finds that the proposal adequately addresses the need to define the PA's scope of practice with either a practice agreement or a privileging document. However, the Board's has the following specific concerns and suggestions for how to address those concerns:

(1) Documented plan for physician consultation. The language of the bill covers this with regard to the Practice Agreement practice model, but not the Privileges format. Language similar to that found at page 10, lines 12-15 and page 11, lines 1-3 needs to be added to the Privileges practice model, so that all PAs (and their patients) have the benefit of a documented plan for consultation. Subparagraph (f) at page 12 would be eliminated or modified to reflect this one model with the only difference being that scope of practice would be defined in the privileging document for PAs practicing in a setting where privileges are granted. To be clear, the plan for consultation in no way limits consultation with any other medical professional; it simply documents the consulting relationship between a PA and one or more physicians.
(2) Periodic review of PA practice. The Board agrees that there should be periodic review of PA practice no less frequently than every two years, as found at page 11, lines 12-14. Language similar to that included for the practice agreement setting at page 11, lines 12-14 needs to be added to the privileges practice setting in order to provide for periodic physician review of the PA scope of practice and grant of privileges on behalf of the hospital or FQHC.
(3) A copy of the document shall be filed with the Board as may be established by rule, with no approval by the Board needed. In that the bill already mandates preparation of the document, scanning it and submitting it to the Board, with no need for it to be reviewed by or approved by the Board at that time, is a minimal task. If no changes, there would be no need to submit a new copy at renewal; instead, that could be covered by PAs certifying that the review has occurred on the renewal application.

(4) While the Board accepts the concept of relaxing the supervision requirements for PAs, the proposal does not adequately address the inexperienced PA. The Board submits that provisions need to be added for less experienced PAs.
    a. For PAs without two years of Vermont practice experience, the practice agreement or privileging document must specify a plan for supervision that includes periodic meetings between the designated physician and PA, retrospective review of charts, and feedback from the physician. This period of supervision shall continue for two years with a minimum of 2,400 hours of practice. For PAs coming from outside of Vermont the Board and the Licensing Committee should be granted discretion to review the PA's training and experience and determine whether a period of transition is appropriate.
    b. PAs transitioning to a new area of specialty in which they have not practiced should also be addressed. There should be provision for the Board to establish by rule a process for considering whether a PA who intends to change to a new specialty of practice needs to have a transition period of supervision and for how long.

C. Working without a Documented Scope of Practice and Plan for Consultation (page 11, lines 15-20).

The Board opposes the proposal for PAs to be able to practice independently for up to 30 days upon unanticipated unavailability of the physician identified in the practice agreement (or the physician identified in the Privileges practice model, see B(2) above). In order to provide for continuity of patient access to care, the law should either encourage or require a back-up physician or physicians for consultation. Also, the law could allow for a PA in a practice that has a limited number of MDs to have the back-up be outside the practice. This is not a substitute for the existing "secondary supervisor," but only a mechanism to avoid situations in which patient access to care might be impacted by the unforeseen unavailability of the consulting MD.

D. Specific Language Issues.

(1) Page 2, lines 2-3. End line 2 with a period after "Vermonters."
(2) Delete the term "practice-identified" throughout and replace with the phrase "one or more physicians within the practice."
(3) It needs to be clear that there is a requirement for documentation for each practice site, but multi-site practices that allow the PA to practice in the same area of practice at multiple sites can cover more than one location in a single document.
(4) The proposed 26 V.S.A. § 1736(3) needs to be revised to reflect four different scenarios. As drafted it mentions practice without a practice agreement, but not practicing beyond the terms of the agreement. Also, the draft does not mention practice in a hospital or FQHC without having the required document; it only mentions practicing "inconsistent" with the privileges. Regardless of the practice setting, it needs to be unprofessional conduct to practice without the scope of practice and consultation provisions in place, or to practice beyond or inconsistent with the document or documents.

(5) The Board opposes the provision regarding emergency situations at page 9, lines 3 through 10. Emergency care is covered by several existing laws, including the "good Samaritan" exception (see 26 V.S.A. § 1313(a)(2)) and the EMAC law (20 V.S.A. § 104(b)). This proposed language lacks precision and is an ill-defined loop hole that would impede Vermont's ability to exert its sovereign right to prohibit the unlicensed practice of medicine.

E. The Board does not take a position on the provisions that do not relate to licensing and regulation that are found at page 20, line 13 through page 21, line 15.