



State of Vermont
Office of the Secretary of State

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To: Hon. Virginia Lyons, Chair
Senate Committee on Health & Welfare
From: S. Lauren Hibbert, Director, Office of Professional Regulation
Date: April 20, 2022
Re: H.462 Amendment Concerning 26 V.S.A. Ch. 57 Scope-of-Practice Review Process

Thank you for the opportunity to provide testimony on the proposed amendment to H.464, *An act relating to miscellaneous Department of Health programs*. The Office of Professional Regulation understands that this amendment would add a new section 3109 to Chapter 57 of Title 26, with the goal of ensuring the Office consults the Board of Medical Practice when reviewing a proposal to materially alter the scope of practice of a regulated health care profession. The proposal reads as follows:

*Sec. ____ . 26 V.S.A. § 3109 is added to read:
§ 3109. COLLABORATION WITH BOARD OF MEDICAL PRACTICE
For any review of a regulatory law pursuant to section 3104 of this chapter that relates to a health care profession, or any preliminary assessment of an amendment to a scope of practice for a health care profession pursuant to section 3108 of this chapter in a manner that could overlap with the scope of practice of another health care profession, the Office shall collaborate with the Board of Medical Practice as the Office conducts its review or assessment and shall develop joint recommendations and legislative proposals with the Board regarding regulation of the profession or any amendments to the profession's scope of practice.*

The Office of Professional Regulation cannot support the amendment as currently drafted. The language would have the consequence of undermining the independence of Chapter 57 scope analyses. For more than forty years, the Chapter has made Vermont a leader in sound occupational and professional licensing policy, by establishing a clear, consistent legislative instruction that occupational and professional licensing is imposed for the singular purpose of public protection and should be no more burdensome than is necessary. Like most states, ours relies on dedicated boards of appointed professionals to regulate their peers. But Chapter 57 sets us apart by ensuring that Vermont's citizen legislature has the benefit of candid, objective recommendations from agencies, built on defined criteria, considerations, and extensive research, yielding reports and recommendations that are informed, but never controlled, by members of regulated fields. Absent the independent, agency-based review process established in Chapter 57, the risk is that professions will be overly protective of their scopes of practice, because of economic reasons or misinformation about the threat to the public, and guidance provided to the legislature will not reflect the fundamental tenants of professional regulation policy in Vermont (i.e., that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public).

As a matter of course, the Office invites the Board of Medical Practice to participate in every health-care-related analysis it performs. Every recent review, including, ophthalmology, psychology, and pharmacy has included input from the Board of Medical Practice as an important stakeholder. Collaboration is the norm, not the exception, and we are proud of and grateful for the collaborative relationships we enjoy with our colleagues and partners at the Department of Health, the Board of Medical Practice, and the Vermont Medical Society.

The currently proposed amendment includes a requirement that Chapter 57 recommendations must be “joint recommendations” with the board governing physician practice. This requirement inadvertently shatters a firewall between independent policy analysis and market participants. The Office is concerned that agency analyses premised on compulsory concurrence of affected practitioners may lose their value to policymakers and come to look like one more argument instead of a reasoned examination of competing arguments.

Vermont’s Chapter 57 has become a model for other states seeking to establish objective practice reviews. Possible amendments should be approached with care to preserve the best practices that make Vermont’s process stand out. From an intra-governmental perspective, language calling for compulsory agreement with the Board of Medical Practice may have the peculiar and unintended effect of subordinating the Commissioner of Health and Secretary of Human Services to a body those officials oversee. Finally, OPR recommends that involvement of other health-science boards is encouraged, when appropriate, for example, pharmacy, dentistry, psychology, and osteopathic medicine.

OPR believes the good intent of the amendment now under consideration could be achieved with a slightly different amendment to the statute governing scope-of-practice analyses, section 3108. The draft amendment below would call for consultation with all relevant regulatory boards, while preserving the critical independence of Chapter 57 reviews and maintaining accountable executive hierarchy under the Secretary of Human Services and Commissioner of Health. In the alternative, we would ask the Committee to defer any amendment to Title 26 to a future session in which the House might participate in this important debate.

OPR’s alternative language is:

Sec ____. 26 V.S.A. § 3108 is amended to read:

§ 3108. PRELIMINARY ASSESSMENT OF SCOPE OF PRACTICE

(d) Impacted persons; statements and replies.

(1) Any person acting on behalf of a profession that may be directly impacted by a scope of practice request submitted pursuant to this section may submit to the Office a written statement identifying the nature of the impact not later than October 1 of the year preceding the next regular session of the General Assembly. That person shall indicate the nature of the impact by taking into consideration the criteria set forth in subsection (b) of this section and shall provide a copy of the written impact statement to the requestor.

(2) Not later than October 15 of that year, the requestor shall submit a written response to the Office and the person that provided the written impact statement. The requestor's written response shall include a description of areas of agreement and disagreement between the respective professions.

(e) Consultation with Commissioner and boards.

(1) If an assessment under this section addresses activities that would constitute the “practice of medicine,” as defined by 26 V.S.A. §1311(1), the Office shall give written notice to the Commissioner of Health and any professional regulatory board or boards having jurisdiction over some or all of the regulated acts. The Office shall include with such notice a copy of the supporting information received from the requestor pursuant to subsection 3108(b) of this chapter. Notice shall be given within 14 days of receipt of the requestor’s supporting information.

(2) The Office shall consult the Commissioner and relevant boards with respect to the requestor’s assertions under subsection 3108(b). After consulting with the Office, and not later than November 15 of

the year preceding the next regular session of the General Assembly, the Commissioner or boards may file with the Office any written commentary they wish the Office to consider. Submitted commentary shall be appended to the Office's final report or assessment upon filing with the Legislature.