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S.28

An act relating to access to certain legally protected health care services

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(44) Records held by the Office of Professional Regulation, Board of Medical Practice, or another public agency that issues one or more licenses, certificates, or registrations to engage in a State-regulated profession or occupation if the records contain the telephone number, email address, physical address, or mailing address, or a combination of these, of an individual who has applied for or has been granted a license, certificate, or registration to practice a profession or occupation in this State, except that the public agency shall disclose any address that the individual has designated as a public address in the record.

Sec. 2. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds

1 for denial of a license or other disciplinary action. Any one of the following
2 items or any combination of items, whether the conduct at issue was
3 committed within or outside the State, shall constitute unprofessional conduct:

4 (1) Fraudulent or deceptive procurement or use of a license.

5 (2) Advertising, including advertising about health care services, that is
6 intended or has a tendency to deceive or mislead.

7 * * *

8 (6) Delegating professional responsibilities, including the delivery of
9 health care services, to a person whom the licensed professional knows, or has
10 reason to know, is not qualified by any combination of training, experience,
11 education, or licensing credentials to perform them, or knowingly providing
12 professional supervision or serving as a preceptor to a person who has not been
13 licensed or registered as required by the laws of that person's profession.

14 * * *

15 (21) Permitting one's name or license to be used by a person, group, or
16 corporation when not actually in charge of ~~or~~ responsible for, or actively
17 overseeing the professional services provided.

18 * * *

19 (f)(1) Health care providers. Notwithstanding subsection (e) of this section
20 or any other law to the contrary, no health care provider who is certified,
21 registered, or licensed in Vermont shall be subject to professional disciplinary

1 action by a board or the Director, nor shall a board or the Director take adverse
2 action on an application for certification, registration, or licensure of a
3 qualified health care provider, based solely on:

4 * * *

5 (2) Definitions. As used in this subsection:

6 * * *

7 (B) “Health care services” means services for the diagnosis,
8 prevention, treatment, cure, or relief of a physical or mental health condition,
9 including counseling, procedures, products, devices, and medications.

10 * * *

11 Sec. 3. 9 V.S.A. chapter 63, subchapter 11 is amended to read:

12 Subchapter 11. ~~Pregnancy Services Centers~~ Health Care Services

13 § 2491. FINDINGS; LEGISLATIVE INTENT

14 (a) ~~Findings.~~ The General Assembly finds that:

15 (1) ~~Centers that seek to counsel clients against abortion, often referred to~~
16 ~~as crisis pregnancy centers or limited services pregnancy centers, have become~~
17 ~~common across the country, including in Vermont. Accurate information~~
18 ~~about the services that a limited services pregnancy center performs, in~~
19 ~~addition to forthright acknowledgement of its limitations, is essential to enable~~
20 ~~individuals in this State to make informed decisions about their care. This~~
21 ~~includes individuals being informed of whether they are receiving services~~

1 ~~from a licensed and qualified health care provider at a limited services~~
2 ~~pregnancy center, as this allows individuals to determine if they need to seek~~
3 ~~medical care elsewhere in order to continue or terminate a pregnancy.~~

4 ~~(2) Although some limited services pregnancy centers openly~~
5 ~~acknowledge in their advertising, on their websites, and at their facilities that~~
6 ~~they neither provide abortions nor refer clients to other providers of abortion~~
7 ~~services, others provide confusing and misleading information to pregnant~~
8 ~~individuals contemplating abortion by leading those individuals to believe that~~
9 ~~their facilities offer abortion services and unbiased counseling. Some limited-~~
10 ~~services pregnancy centers have promoted patently false or biased medical~~
11 ~~claims about abortion, pregnancy, contraception, and reproductive health care~~
12 ~~providers.~~

13 ~~(3) False and misleading advertising by centers that do not offer or refer~~
14 ~~clients for abortion is of special concern to the State because of the time-~~
15 ~~sensitive and constitutionally protected nature of the decision to continue or~~
16 ~~terminate a pregnancy. When a pregnant individual is misled into believing~~
17 ~~that a center offers services that it does not in fact offer or receives false or~~
18 ~~misleading information regarding health care options, the individual loses time~~
19 ~~crucial to the decision whether to terminate a pregnancy and may lose the~~
20 ~~option to choose a particular method or to terminate a pregnancy at all.~~

1 ~~(4)~~ Telling the truth is how trained health care providers demonstrate
2 respect for patients, foster trust, promote self-determination, and cultivate an
3 environment where best practices in shared decision-making can flourish.
4 Without veracity in information and communication, it is difficult for
5 individuals to make informed, voluntary choices that are essential to one's
6 sense of personal agency and autonomy.

7 ~~(5)(2)~~ Advertising strategies and educational information about health
8 care options that lack transparency, use misleading or ambiguous terminology,
9 misrepresent or obfuscate services provided, or provide factually inaccurate
10 information are a form of manipulation that disrespects individuals,
11 undermines trust, broadens health disparity, and can result in patient harm.

12 ~~(b) Intent.~~

13 ~~(1) It is the intent of the General Assembly to ensure that the public is~~
14 ~~provided with accurate, factual information about the types of health care~~
15 ~~services that are available to pregnant individuals in this State. The General~~
16 ~~Assembly respects the constitutionally protected right of each individual to~~
17 ~~personal reproductive autonomy, which includes the right to receive clear,~~
18 ~~honest, and nonmisleading information about the individual's options and to~~
19 ~~make informed, voluntary choices after considering all relevant information.~~

1 ~~(2) The General Assembly respects the right of limited services~~
2 ~~pregnancy centers to counsel individuals against abortion, and nothing in this~~
3 ~~subchapter should be construed to regulate, limit, or curtail such advocacy.~~

4 § 2492. ~~DEFINITIONS~~ DEFINITION

5 As used in this subchapter:

6 ~~(1) “Abortion” means any medical treatment intended to induce the~~
7 ~~termination of, or to terminate, a clinically diagnosable pregnancy except for~~
8 ~~the purpose of producing a live birth.~~

9 ~~(2) “Client” means an individual who is inquiring about or seeking~~
10 ~~services at a pregnancy services center.~~

11 ~~(3) “Emergency contraception” means any drug approved by the U.S.~~
12 ~~Food and Drug Administration as a contraceptive method for use after sexual~~
13 ~~intercourse, whether provided over the counter or by prescription.~~

14 ~~(4) “Health information” means any oral or written information in any~~
15 ~~form or medium that relates to health insurance or the past, present, or future~~
16 ~~physical or mental health or condition of a client.~~

17 ~~(5) “Limited services pregnancy center” means a pregnancy services~~
18 ~~center that does not directly provide, or provide referrals to clients for,~~
19 ~~abortions or emergency contraception.~~

20 ~~(6) “Pregnancy services center” means a facility, including a mobile~~
21 ~~facility, where the primary purpose is to provide services to individuals who~~

1 are or may be pregnant and that either offers obstetric ultrasounds, obstetric
2 sonograms, or prenatal care to pregnant individuals or has the appearance of a
3 medical facility. A pregnancy services center has the appearance of a medical
4 facility if two or more of the following factors are present:

5 (A) ~~The center offers pregnancy testing or pregnancy diagnosis, or~~
6 ~~both.~~

7 (B) ~~The center has staff or volunteers who wear medical attire or~~
8 ~~uniforms.~~

9 (C) ~~The center contains one or more examination tables.~~

10 (D) ~~The center contains a private or semiprivate room or area~~
11 ~~containing medical supplies or medical instruments.~~

12 (E) ~~The center has staff or volunteers who collect health information~~
13 ~~from clients.~~

14 (F) ~~The center is located on the same premises as a State-licensed~~
15 ~~medical facility or provider or shares facility space with a State-licensed~~
16 ~~medical provider.~~

17 (7) ~~“Premises” means land and improvements or appurtenances or any~~
18 ~~part thereof~~ “health care services” means services for the diagnosis,
19 prevention, treatment, cure, or relief of a physical, dental, behavioral, or mental
20 health condition or substance use disorder, including counseling, procedures,
21 products, devices, and medications.

1 § 2493. UNFAIR AND DECEPTIVE ACT

2 (a) It is an unfair and deceptive act and practice in commerce and a
3 violation of section 2453 of this title for any ~~limited-services pregnancy center~~
4 person to disseminate or cause to be disseminated to the public any advertising
5 about ~~the~~ health care services or proposed services performed ~~at that center in~~
6 this State that is untrue or clearly designed to mislead the public about the
7 nature of the services provided. Advertising includes representations made
8 directly to consumers; marketing practices; communication in any print
9 medium, such as newspapers, magazines, mailers, or handouts; and any
10 broadcast medium, such as television or radio, telephone marketing, or
11 advertising over the ~~Internet~~ internet such as through websites ~~and~~, web ads
12 advertisements, and social media. For purposes of this chapter, advertising ~~or~~
13 ~~the provision of services by a limited-services pregnancy center~~ about health
14 care services is an act in commerce.

15 (b) ~~Health care providers certified, registered, or licensed under Title 26 of~~
16 ~~the Vermont Statutes Annotated who are employed by, contracted to provide~~
17 ~~services for or on behalf of, or volunteer to provide services at a limited-~~
18 ~~services pregnancy center shall be responsible for conducting and providing~~
19 ~~health care services, information, and counseling at the center. The failure of a~~
20 ~~health care professional certified, registered, or licensed under Title 26 of the~~
21 ~~Vermont Statutes Annotated to conduct or to ensure that health care services,~~

1 ~~information, and counseling at the limited services pregnancy services center~~
2 ~~are conducted in accordance with State law and professional standards of~~
3 ~~practice may constitute unprofessional conduct under 3 V.S.A. § 129a and 26~~
4 ~~V.S.A. § 1354. [Repealed.]~~

5 (c) The Attorney General has the same authority to make rules, conduct
6 civil investigations, and bring civil actions with respect to violations of
7 ~~subsection (a) of this section as provided under subchapter 1 of this chapter.~~

8 Sec. 4. 18 V.S.A. § 4999 is amended to read:

9 § 4999. DEFINITIONS

10 As used in this part:

11 * * *

12 (2) “Licensed health care professional;” ~~as used in 18 V.S.A. chapter~~
13 ~~107,~~ means a physician, a physician assistant, ~~a naturopathic physician,~~ or an
14 advanced practice registered nurse. As used in chapter 107 of this part only,
15 the term also includes a naturopathic physician.

16 * * *

17 Sec. 5. 18 V.S.A. § 5200 is amended to read:

18 § 5200. DEFINITIONS

19 As used in this chapter:

20 * * *

1 (4) “Licensed health care professional” means a physician, a physician
2 assistant, a naturopathic physician, or an advanced practice registered nurse.

3 (5) “Natural organic reduction” has the same meaning as in section 5302
4 of this title.

5 Sec. 6. 18 V.S.A. § 5222 is amended to read:

6 § 5222. REPORTS

7 (a)(1) The following fetal deaths shall be reported by the hospital,
8 ~~physician~~ licensed health care professional, or funeral director directly to the
9 Commissioner within seven days after delivery on forms prescribed by the
10 Department:

11 ~~(1)(A)~~ All fetal deaths of 20 or more weeks of gestation or, if gestational
12 age is unknown, of 400 or more grams, 15 or more ounces, fetal weight shall
13 be reported.

14 ~~(2)(B)~~ All therapeutic or induced abortions, as legally authorized to be
15 performed, of any length gestation or weight shall be reported.

16 ~~(3)(2)~~ Spontaneous abortions and ectopic pregnancies of less than 20
17 weeks gestation are not required to be reported.

18 (b) The ~~physician~~ licensed health care professional who treats a woman as
19 a result of a miscarriage or abortion shall report the fetal death if it is not
20 known to be previously reported under subsection (a) of this section. If there is
21 evidence of violence or other unusual or suspicious circumstances, the medical

1 examiner shall be immediately notified, and ~~he or she~~ the medical examiner
2 shall complete at least the medical items on the report. If a funeral director is
3 to be involved, the ~~physician~~ licensed health care professional may delegate to
4 the funeral director the responsibility for completing items other than those of
5 a medical nature. Similarly, the ~~physician~~ licensed health care professional
6 may delegate the responsibility for completion of nonmedical items to
7 appropriate personnel having access to records containing the information.

8 (c) If a fetal death occurs on a moving conveyance, the place of occurrence
9 shall be given as the town or city where removal from the vehicle took place.

10 (d) ~~Fetal death reports~~ Reports made pursuant to this section are for
11 statistical purposes only and are not public records. They shall be kept
12 confidential; shall not be disclosed or discoverable in any civil, criminal,
13 administrative, or other proceeding; and shall be destroyed after ~~five~~ two years.

14 Sec. 7. 26 V.S.A. § 1354 is amended to read:

15 § 1354. UNPROFESSIONAL CONDUCT

16 (a) Prohibited conduct. The Board shall find that any one of the following,
17 or any combination of the following, whether the conduct at issue was
18 committed within or outside the State, constitutes unprofessional conduct:

19 * * *

20 (2) all advertising ~~of~~ about health care services or a medical business
21 that is intended or has a tendency to mislead or deceive the public or impose

1 upon credulous or ignorant persons and so be harmful or injurious to public
2 morals or safety;

3 * * *

4 (21) permitting one's name or license to be used by a person, group, or
5 corporation when not actually in charge of, ~~or~~ responsible for, or actively
6 overseeing the treatment given or other health care services provided;

7 * * *

8 (29) delegation of professional responsibilities, including delivery of
9 any health care services, to a person whom the licensed professional knows, or
10 has reason to know, is not qualified by any combination of training,
11 experience, education, or licensing credentials to perform them;

12 * * *

13 (33)(A) providing, prescribing, dispensing, or furnishing medical
14 services or prescription medication or prescription-only devices to a person in
15 response to any communication transmitted or received by computer or other
16 electronic means, when the licensee fails to take the following actions to
17 establish and maintain a proper physician-patient relationship:

18 (i) a reasonable effort to verify that the person requesting
19 medication is in fact the patient, and is in fact who the person claims to be;

20 (ii) establishment of documented diagnosis through the use of
21 accepted medical practices; and

1 (iii) maintenance of a current medical record;

2 (B) for the purposes of this subdivision (33), an electronic, ~~on-line~~
3 online, or telephonic evaluation by questionnaire is inadequate for the initial
4 evaluation of the patient, except as otherwise provided in subdivision (C)(iv)
5 of this subdivision (33);

6 (C) the following would not be in violation of this subdivision (33) if
7 transmitted or received by computer or other electronic means:

8 (i) initial admission orders for newly hospitalized patients;

9 (ii) prescribing for a patient of another physician for whom the
10 prescriber has taken the call;

11 (iii) prescribing for a patient examined by a licensed advanced
12 practice registered nurse, physician assistant, or other advanced practitioner
13 authorized by law and supported by the physician;

14 (iv) in furtherance of 18 V.S.A. chapter 223, prescribing
15 medication for an individual to terminate the individual's pregnancy based on
16 an adaptive questionnaire that allows the licensee to obtain additional medical
17 history and ask follow-up questions as needed;

18 (v) continuing medication on a short-term basis for a new patient,
19 prior to the patient's first appointment; or

20 ~~(v)~~(vi) emergency situations where life or health of the patient is
21 in imminent danger;

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(b) Failure to practice competently. The Board may also find that failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes, as determined by the Board:

- (1) performance of unsafe or unacceptable patient care; or
- (2) failure to conform to the essential standards of acceptable and prevailing practice.

(c) Burden of proof. The burden of proof in a disciplinary action shall be on the State to show by a preponderance of the evidence that the person has engaged in unprofessional conduct.

~~(d)(1)~~ Health care providers. Notwithstanding any other law to the contrary, no health care provider who is certified, registered, or licensed in Vermont shall be subject to professional disciplinary action by the Board, nor shall the Board take adverse action on an application for certification, registration, or licensure of a qualified health care provider, based solely on:

- ~~(A)~~(1) the health care provider providing or assisting in the provision of legally protected health care activity; or
- ~~(B)~~(2) a criminal, civil, or disciplinary action in another state against the health care provider that is based solely on the provider providing or assisting in the provision of legally protected health care activity.

1 any communication transmitted or received by computer or other electronic
2 means when the licensee fails to take the following actions to establish and
3 maintain a proper provider-patient relationship:

4 (A) a reasonable effort to verify that the person requesting
5 medication is in fact the patient and is in fact who the person claims to be;

6 (B) establishment of documented diagnosis through the use of
7 accepted medical practices; and

8 (C) maintenance of a current medical record.

9 * * *

10 (b)(1) For the purposes of subdivision (a)(6) of this section, an electronic,
11 online, or telephonic evaluation by questionnaire is inadequate for the initial
12 evaluation of the patient, except as otherwise provided in subdivision (2)(D) of
13 this subsection.

14 (2) The following would not be in violation of subdivision (a)(6) of this
15 section:

16 (A) initial admission orders for newly hospitalized patients;

17 (B) prescribing for a patient of another provider for whom the
18 prescriber has taken call;

19 (C) prescribing for a patient examined by a licensed APRN,
20 physician assistant, or other practitioner authorized by law and supported by
21 the APRN;

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Sec. 10. 26 V.S.A. § 1736 is amended to read:

§ 1736. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a licensed physician assistant shall constitute unprofessional conduct; when that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of licensure:

* * *

(2) occupational advertising or advertising about health care services that is intended or has a tendency to mislead or deceive the public;

(3) exercising undue influence on or taking improper advantage of a person using the individual's services, or promoting the sale of professional goods or services in a manner that exploits a person for the financial gain of the practitioner or of a third party;

(4) failing to comply with provisions of federal or state statutes or rules governing the profession;

(5) conviction of a crime related to the profession; and

(6) conduct that evidences unfitness to practice in the profession.

* * *

(d) As used in this section, "health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a physical or mental health

1 condition, including counseling, procedures, products, devices, and
2 medications.

3 Sec. 11. 26 V.S.A. § 2024 is added to read:

4 § 2024. CONFIDENTIALITY OF PRESCRIBER INFORMATION ON
5 MEDICATIONS FOR LEGALLY PROTECTED HEALTH CARE
6 ACTIVITY

7 (a) As used in this section, “gender-affirming health care services” and
8 “reproductive health care services” have the same meanings as in 1 V.S.A.
9 § 150.

10 (b) Upon the request of a prescribing practitioner and to the extent not
11 expressly prohibited under federal law, a pharmacist shall not list the
12 practitioner’s name on a fulfilled prescription for medication for gender-
13 affirming health care services or reproductive health care services but shall
14 instead list the name of the facility at which the practitioner is employed or is a
15 contract employee.

16 (c) Nothing in this chapter or the rules governing the pharmacy profession
17 shall be construed to require a pharmacist to list the prescribing practitioner’s
18 name on a fulfilled prescription for medication for gender-affirming health
19 care services or reproductive health care services.

1 Sec. 12. 26 V.S.A. § 2858 is amended to read:

2 § 2858. UNPROFESSIONAL CONDUCT

3 (a) The following conduct and the conduct described in section 1354 of this
4 title by a certified radiologist assistant constitutes unprofessional conduct.

5 When that conduct is by an applicant or person who later becomes an
6 applicant, it may constitute grounds for denial of certification:

7 * * *

8 (17) delegating professional responsibilities to a person whom the
9 certified professional knows or has reason to know is not qualified by any
10 combination of training, experience, education, or licensing credentials to
11 perform;

12 * * *

13 Sec. 13. EFFECTIVE DATE

14 This act shall take effect on passage.