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To: Hon. Alyssa Black, Chair  
House Committee on Health Care

From: S. Lauren Hibbert, Deputy Secretary of State  
Jen Colin, General Counsel, Office of Professional Regulation

Re: **S.28, An act relating to access to certain legally protected health care services**

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Thank you for the opportunity to testify regarding S.28, an act relating to access to certain legally protected health care services. OPR broadly supports this bill and protecting access to all health care services.

OPR would be ready to implement several sections of the bill without issue. There are a few sections that we suggest amending to avoid the unintended disruption of public regulation.

**Section 1, Public Records Exemption - makes contact information for professional licensees and applicants exempt from public records law under 1 V.S.A. § 317(c).**

- OPR supports this change.
- Licensees and Applicants must designate an address as public in licensing applications.
- It is important to keep application materials public, to maintain transparency about OPR's licensing decisions. However, this need does not extend to an individual's private contact information or physical address.
- This change will require some additional staff time for redaction of documents that are otherwise public record.

**Section 2, Truth in Health Care Information – adds false, deceptive, or misleading advertising about health care services and other requirements to OPR’s Unprofessional Conduct statutes in 3 V.S.A. § 129a.**

OPR supports the following changes:

- Adding “advertising about health care services, that is intended or has a tendency to deceive or mislead” to the definition of unprofessional conduct in 3 V.S.A. § 129a(a)(2).
- Adding “delivery of health care services” to unprofessional conduct statute that addresses delegation, 3 V.S.A. § 129a(a)(6).
- Adding the requirement for active oversight by professionals allowing their names and licenses to be used, 3 V.S.A. § 129a(a)(21).

We ask that the “any combination of” addition to 3 V.S.A. § 129a(a)(6) be stricken from the bill:

- As drafted, this language would invite delegation to individuals acting out of scope of their professional licenses or wholly lacking in appropriate licensure.
- OPR is actively prosecuting licensed individuals for engaging in dangerous medical activity without any medical licensure. Those individuals are arguing that they are qualified by virtue of training alone, and that the activity can therefore be delegated to them by licensed professionals. The “any combination of” language would strengthen this argument and make it harder for OPR to protect the public from unskilled, unlicensed medical practice.

We propose adding language to clarify that a licensed professional may not delegate responsibilities that would expand the scope of practice for another licensed professional.

- To ensure public protection, licensed professionals must adhere to their permitted scopes of practice, which may not be expanded through delegation.
- Added language will inform delegating practitioners of the limits of delegation and the risks of being held liable for actions that do not meet the standard of care taken by the individual to whom tasks have been delegated.

Based on the information provided above, OPR suggests the following amendments:

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

\* \* \*

(6) Delegating professional responsibilities, including the delivery of health care services, to a person whom the licensed professional knows, or has reason to know, lacks licensing credentials to perform them or is not qualified ~~by any combination of~~ training, experience, or education, ~~or licensing credentials~~ to perform them, or knowingly providing professional supervision or serving as a preceptor to a person who has not been licensed or registered as required by the laws of that person's profession. Delegation may not expand the scope of practice for a licensed professional. A delegating licensee shall be liable under this section for the actions of the individual to whom they delegated professional responsibilities.

### Sections 3–5

- OPR supports these changes.

### Section 6

- OPR supports these changes.
- The statute could be made more gender inclusive if “woman” were changed to “patient” in 18 V.S.A. § 5222(b).

### Sections 7, 8, 9: Delegation and Online Prescribing

- We have the same concern about the “any combination of” language being added to 26 V.S.A. §§ 1354(a)(29), 1658(a)(17) that we had above. Although this section falls under the jurisdiction of the Board of Medical Practice, not OPR, it would affect OPR enforcement efforts by muddying the waters around what activities may be delegated to OPR-licensed professionals.

- We support the addition of 26 V.S.A. § 1354(a)(33)(C)(iv) and 26 V.S.A. § 1615(b)(2)(D), allowing the prescribing of medication to terminate an individual’s pregnancy based on an adaptive questionnaire.
  - The existing administrative rules of the Board of Pharmacy state that a prescription “based solely on an online questionnaire or consultation outside of an ongoing clinical relationship” is not a legitimate prescription and should not be filled. [Pharmacy Rule 10.2.](#)
- However, OPR is in the process of promulgating new pharmacy rules that do not include this language, and we do not oppose statutory language that would supersede that rule specifically for pregnancy termination medication. The proposed language is narrowly tailored to meet a compelling public-health interest.
  - Prescribing practitioners would still be responsible for “conform[ing] to the essential standards of acceptable and prevailing practice,” which are ever evolving. 3 V.S.A. § 129a(b)(2); 26 V.S.A. § 1354(b)(2).
  - In addition, OPR would still have oversight over manufacturers, wholesalers, and pharmacies involved in the supply chain of abortion medication prescribed under this section.
- OPR suggests adding language that the adaptive questionnaire referenced in 26 V.S.A. § 1354(a)(33)(C)(iv) and 26 V.S.A. § 1615(b)(2)(D) must be “prescriber-approved” to ensure the provider has identified the information needed from the patient to meet the essential standards of acceptable and prevailing practice:
 

Amendment to 26 V.S.A. § 1354(a)(33)(C)(iv) and 26 V.S.A. § 1615(b)(2)(D):  
 “in furtherance of 18 V.S.A. chapter 223, prescribing medication for an individual to terminate the individual’s pregnancy based on an a prescriber-approved adaptive questionnaire that allows the licensee to obtain additional medical history and ask follow-up questions as needed....”

**Section 10**

- OPR supports these changes.

**Section 11**

- OPR supports this policy, provided that patients have a means of learning the name of their prescribers.

- Current Pharmacy Rules require pharmacists to include prescriber names on all labels. In anticipation of this section’s carve-out, OPR’s pending Pharmacy Rules acknowledge the possibility of this superseding language.
- We have learned from pharmacists that there remain concerns about the implementation of this Section. OPR encourages the Committee to reach out to the National Association of Chain Drug Stores and the Vermont Pharmacists Association to determine the feasibility of removing prescriber names from medication labels.
- The bill language seems to assume that all prescribing practitioners will be employees or contractors working within medical facilities that provide some degree of anonymity. What about solo practitioners or partnerships?
- OPR suggests the following minor drafting revisions:
  - As drafted, the bill says
    - (b) Upon the request of a prescribing practitioner and to the extent not expressly prohibited under federal law, a pharmacist shall not ...

The bill’s purpose would be better served by changing “prohibited” to “required,” since the bill would forbid the pharmacist from taking an action.
  - We suggest changing each instance of “pharmacist” to “pharmacy professional,” because labeling may sometimes be performed by licensed pharmacy interns and pharmacy technicians as well as pharmacists.

**Section 12**

- We have the same concern here as with Sections 2, 7, and 9 regarding delegation to unlicensed individuals.

**Section 13**

- Effectiveness upon passage works for OPR. Again, we recommend that the Committee hear from the pharmacy profession on an appropriate effective date for Section 11.