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February 28, 2025

To: Hon. Matthew Birong, Chair
House Committee on Government Operations and Military Affairs

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

Re: Office of Professional Regulation Bill

Dear Committee Members:

Thank you for the opportunity to testify again about this year's OPR Bill.

Title 3 – General Provisions

Sec. 1: 3 V.S.A. § 122, which authorizes OPR's regulation of specified professions, is amended to strike (21) Motor Vehicle Racing, as OPR is recommending deregulation of Motor Vehicle Racing (MVR)

Sec 2: 3 V.S.A. § 123, which sets forth the duties of OPR, is amended in the following subparts:

(k)(2) Strike the last sentence that refunds the \$25 Second Chance Determination fee.

OPR requests striking the refund because:

- Second Chance Determinations are resource-intensive, requiring review by attorneys and licensing supervisors; and
- Though the fee is minimal, it offsets some of the Agency's financial expenditure in offering this service.

(m) Add a provision that exempts OPR from 3 V.S.A. § 116a(b)(1), which allows termination of State boards five years from the date of creation, or the last date the statutory or session law containing the State board was amended, or on January 1, 2025, whichever is latest. OPR requests the exemption because:

- Amending each profession chapter in Title 26 every five years to maintain the professional boards (14!) would require significantly more staff and resources; and
- OPR utilizes sunset requirements in Chapter 57 of Title 26 to periodically assess its regulatory programs.

Sec. 3

3 V.S.A. § 125, relating to fees, is amended as follows:

- (a)(1) Increase the license verification fee from \$20 to \$30. License verifications are requested by licensees who are seeking licensure in other states or who are providing verifications to employers. This information is also available on OPR’s website in real-time and at no charge.
- (b)(4)(W) Re-establishes an electrology shop fee. Previously there was an electrology shop fee in Title 26. The fee was inadvertently dropped from the fee bill in 2023, so this addition puts the fee back into statute at \$200.
- (b)(9)-(11) These are new fees for services OPR currently provides for free.
 - (b)(9), The apprenticeship pathway to licensure requires additional work.
 - (b)(10) The license specialty application fees unlocks a privilege for applicants to engage in a new professional capacity.
- (b)(11) When we provided bill language, we had been proposing to add a fee for a data feed that many facilities and organizations are currently using. We had proposed a \$1500 fee. However, after reviewing how this is done in other states for similar services and analyzing the complexity of the organizations using the data we would like to change our approach to this issue. Instead, the Secretary of State seeks authorization to charge for voluntary data services and that fee would be set by policy at the Secretary of State level. We are proposing an amendment to 3 V.S.A. § 118. This is the section of the law that authorizes the Secretary to collect and dispose of revenue.
- (b)(12) The disciplinary action surcharge is a new fee for practitioners who have had adjudicated complaint cases where a board or administrative law officer has determined the practitioner engaged in unprofessional conduct. Enforcement action involves investigation and prosecution that is expensive and resource intensive. The substantial cost of our enforcement action is borne by the licensees within the profession, most of whom are operating within professional standards of conduct. The surcharge is intended to offset a portion of the enforcement cost and as a deterrent measure.
- (c) Strike this provision, as we do require payment of renewal fees during a licensure lapse if the licensee has been practicing without a current license. We would not want this section to misconstrue OPR’s ability to pursue such fees.

Sec. 4

3 V.S.A. § 125(b)(4)(V) Peer support providers or peer recovery support specialists application fee was intended to increase from \$50 to \$75 when the original legislation was enacted, but the fee increase did not make it into the fee statute.

Sec. 5

3 V.S.A. § 127(b)(2)(A), raises the administrative penalty for unauthorized practice to \$5,000 to be consistent with the penalty allowed when such action is pursued in Superior Court.

Sec. 6

3 V.S.A. § 129(a)(3), authorizes a Board or the Director to assess a disciplinary action surcharge consistent with the surcharge in the fee language of 3 V.S.A. § 125(b)(12).

Title 26

Sec. 7

Barbers and Cosmetology

26 V.S.A. § 281, which provides postsecondary school of barbering and cosmetology requirements, is amended to include additional language to (a)(4) regarding training and education around textured hair. These changes are important as basic requirements to ensure that diverse populations have access to competent hair care and treatment services.

Sec. 8

Funeral Services

26 V.S.A. § 1272 and § 1275, relating to escrow agents, is amended to be stricken, in part, because:

- The statute includes OPR approval of appointed escrow agents who are not regulated by the Agency;
- Individuals acting as escrow agents have legal fiduciary duties that are outside of OPR's authority and purview;
- OPR has no enforcement mechanism with respect to individuals who are not licensed by the Agency; and
- OPR has not created any process around the appointment of escrow agents in the years these provisions have been in effect.

Sec. 9

Motor Vehicle Racing

REPEAL OF Chapter 93; 26 V.S.A. §§ 4801 through 4813, relating to the regulation of Motor Vehicle Racing, are amended to be stricken, per OPR's Sunset Review Assessment of the profession, discussed above.

Requested Amendments

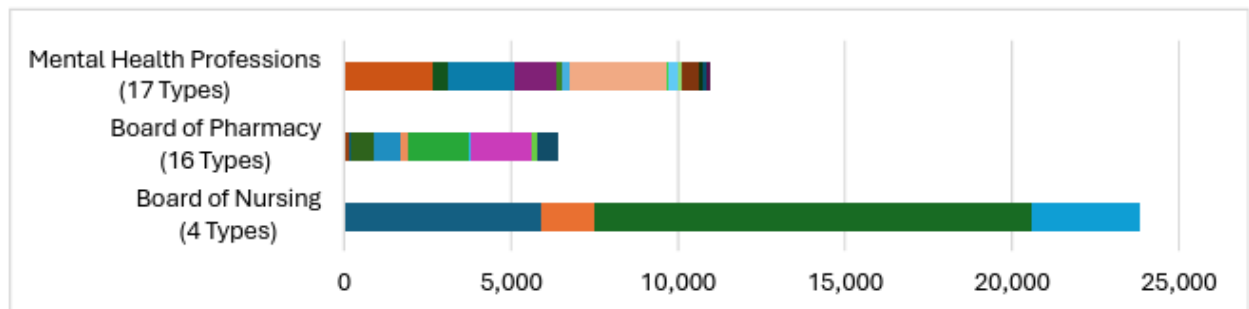
First Amendment: Mental Health Executive Officer

We have recently completed the Mental Health Study required by Act 117 (2022) and Act 77 (2023). At a high level, we found that:

1. **OPR’s regulatory structure of the mental health professions would benefit from a vertical consolidation/reorganization – 17 professional silos into one umbrella board;**
2. It’s possible to streamline entry-level qualifications without lowering professional competency requirements;
3. Additional regulations for supervisors can support both the quality of, and provider interest in, clinical supervision services; and lastly
4. OPR finds that there are barriers to licensure into the mental health professions for individuals from marginalized groups.

To achieve this work OPR needs an Executive Officer position for the OPR-regulated mental health professions.

- OPR is requesting a General Fund allocation of \$170K to hire for this position. It is not anticipated that the Office will request this money in future budget cycles. We are asking for it now because this recommendation was submitted after we had prepared our FY2026 budget and OPR is running at a deficit.
- Next session the OPR bill will include a substantial restructuring of most of our mental health professions into one board.
- This is a significant policy lift and requires stakeholder engagement. An Executive Officer is essential to this work.
- The Office needs this position on an ongoing basis. This field, like Pharmacy and Nursing, has significant diversity and complexity that demands an administrator whose subject matter expertise can:
 - *Coordinate state policy:* This is essential for other state agencies, the designated agencies, compact organizations, and national and state groups and associations.
 - *Perform applicant qualification evaluations:* These applications are complicated and currently must be reviewed at a Board meeting which occurs once a month. To help with their review the Board of Allied Mental Health currently employs a 3rd party contractor to perform education evaluations. An executive officer with subject matter expertise could serve this role for all mental health professions, removing the need for a 3rd party contractor. and
 - *Mitigate operational bottlenecks:* This position will manage responsibilities that would otherwise fall on OPR’s general counsel, the deputy director, and/or the boards.



Licensee populations for Mental Health, Pharmacy and Nursing

Second Amendment: Authority for the Secretary of State to Collect Fees for Optional Services:

This is a voluntary fee for data across the Secretary of State's office that private entities rely on.

In the current draft bill, Sec. 3 amends 3 V.S.A. § 125 to include a fee for a data feed annual fee of \$1,500.00. Since drafting this bill, the Secretary of State wants to change our approach. Instead, we would like to modify the 3 V.S.A. § 118. The modification below would allow the Secretary of State to collect fees for optional services and to set those fees by policy. This would allow for greater flexibility and customization based on the entity asking for the data feed or customizations to the data feed. We propose the following amendment:

§ 118. Collection and disposition of revenue

(a) There is hereby created a Secretary of State Services Fund. The Fund shall be used to provide appropriations for the operations of the Office of the Secretary of State, with the exception of those operations provided for in chapter 5, subchapter 3 of this title. The Fund shall be administered as a special fund pursuant to 32 V.S.A. chapter 7, subchapter 5. At the end of each fiscal year, the unobligated balance in this Fund shall be transferred to the General Fund.

(b) All revenues collected by the Secretary of State shall be deposited into the Secretary of State Services Fund except for the following revenues:

(1) any revenues collected by the Office of Professional Regulation set forth in chapter 5, subchapter 3 of this title; and

(2) any revenues collected pursuant to subsection 117(k) of this title.

(c) The Secretary of State shall have the authority to collect and deposit into the Secretary of State Services Fund revenues generated from optional services offered in the normal course of business, including for one-time or periodic sales of data by subscription or other contractual basis.

Third Amendment: LNA Re-Licensure Requirements

When an individual has not maintained their license and therefore their competency to practice, OPR requires additional training or coursework before re-issuing the license to ensure that the individual is competent. The Nursing Board has reviewed and approved the below language that would streamline and simplify the requirements for a Licensed Nursing Assistant who has been out of practice for less than 5 years.

26 V.S.A. 1645

(c) A licensee seeking to renew an expired or lapsed license after fewer than five years of absence from practice shall repeat and pass the competency examinations approved by the Department of Disabilities, Aging, and Independent Living before licensure renewal.

1. A licensee who does not pass the competency examinations shall repeat a nursing assistant education program and competency examination.