

1 S.28

2 Introduced by Senators Hardy, Lyons, Clarkson, Gulick, Vyhovsky and White

3 Referred to Committee on

4 Date:

5 Subject: Health; health care professionals; legally protected health care;

6 limited-services pregnancy centers; Consumer Protection Act;

7 unprofessional conduct; medication abortions; fetal death reports

8 Statement of purpose of bill as introduced: This bill proposes to expand the
9 prohibition on untrue or misleading advertising by a limited-services
10 pregnancy center under the Consumer Protection Act to apply to any untrue or
11 misleading advertising about health care services. It would eliminate specific
12 responsibility for licensed health care providers who provide services at a
13 limited-services pregnancy center for the services provided at the center and
14 would remove language indicating that failure to ensure those services are
15 conducted in accordance with the law could constitute unprofessional conduct.
16 The bill would also clarify and expand the types of actions that could be
17 considered unprofessional conduct for physicians, physician assistants,
18 advanced practice registered nurses, and naturopathic physicians under their
19 licensure statutes. The bill would eliminate restrictions on a physician,
20 physician assistant, or advanced practice registered nurse prescribing
21 medication to terminate an individual's pregnancy based on asynchronous

1 electronic or other online communication with the individual. It would also
2 specify that fetal death reports required by law must be kept confidential.

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

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

5 Sec. 1. 9 V.S.A. chapter 63, subchapter 11 is amended to read:

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

7 § 2491. FINDINGS; LEGISLATIVE INTENT

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

9 (1) ~~Centers that seek to counsel clients against abortion, often referred to~~
10 ~~as crisis pregnancy centers or limited-services pregnancy centers, have become~~
11 ~~common across the country, including in Vermont. Accurate information~~
12 ~~about the services that a limited-services pregnancy center performs, in~~
13 ~~addition to forthright acknowledgement of its limitations, is essential to enable~~
14 ~~individuals in this State to make informed decisions about their care. This~~
15 ~~includes individuals being informed of whether they are receiving services~~
16 ~~from a licensed and qualified health care provider at a limited-services~~
17 ~~pregnancy center, as this allows individuals to determine if they need to seek~~
18 ~~medical care elsewhere in order to continue or terminate a pregnancy.~~

19 ~~(2) Although some limited-services pregnancy centers openly~~
20 ~~acknowledge in their advertising, on their websites, and at their facilities that~~

1 ~~they neither provide abortions nor refer clients to other providers of abortion~~
2 ~~services, others provide confusing and misleading information to pregnant~~
3 ~~individuals contemplating abortion by leading those individuals to believe that~~
4 ~~their facilities offer abortion services and unbiased counseling. Some limited-~~
5 ~~services pregnancy centers have promoted patently false or biased medical~~
6 ~~claims about abortion, pregnancy, contraception, and reproductive health care~~
7 ~~providers.~~

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

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

1 ~~(5)~~(2) Advertising strategies and educational information about health
2 care options that lack transparency, use misleading or ambiguous terminology,
3 misrepresent or obfuscate services provided, or provide factually inaccurate
4 information are a form of manipulation that disrespects individuals,
5 undermines trust, broadens health disparity, and can result in patient harm.

6 ~~(b) Intent.~~

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

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

17 § 2492. ~~DEFINITIONS~~ DEFINITION

18 As used in this subchapter:

19 ~~(1) "Abortion" means any medical treatment intended to induce the~~
20 ~~termination of, or to terminate, a clinically diagnosable pregnancy except for~~
21 ~~the purpose of producing a live birth.~~

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

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

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

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

12 ~~(6) “Pregnancy services center” means a facility, including a mobile~~
13 ~~facility, where the primary purpose is to provide services to individuals who~~
14 ~~are or may be pregnant and that either offers obstetric ultrasounds, obstetric~~
15 ~~sonograms, or prenatal care to pregnant individuals or has the appearance of a~~
16 ~~medical facility. A pregnancy services center has the appearance of a medical~~
17 ~~facility if two or more of the following factors are present:~~

18 ~~(A) The center offers pregnancy testing or pregnancy diagnosis, or~~
19 ~~both.~~

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

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

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

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

6 ~~(F) The center is located on the same premises as a State licensed~~
7 ~~medical facility or provider or shares facility space with a State licensed~~
8 ~~medical provider.~~

9 ~~(7) “Premises” means land and improvements or appurtenances or any~~
10 ~~part thereof.~~

11 ~~“health care services” means services for the diagnosis, prevention, treatment,~~
12 ~~cure, or relief of a physical, dental, behavioral, or mental health condition or~~
13 ~~substance use disorder, including counseling, procedures, products, devices,~~
14 ~~and medications.~~

15 § 2493. UNFAIR AND DECEPTIVE ACT

16 (a) It is an unfair and deceptive act and practice in commerce and a
17 violation of section 2453 of this title for any ~~limited services pregnancy center~~
18 ~~person~~ to disseminate or cause to be disseminated to the public any advertising
19 about ~~the~~ health care services or proposed services performed ~~at that center~~ in
20 this State that is untrue or clearly designed to mislead the public about the
21 nature of the services provided. Advertising includes representations made

1 directly to consumers; marketing practices; communication in any print
2 medium, such as newspapers, magazines, mailers, or handouts; and any
3 broadcast medium, such as television or radio, telephone marketing, or
4 advertising over the ~~Internet~~ internet such as through websites ~~and~~, web ads
5 advertisements, and social media. For purposes of this chapter, advertising ~~or~~
6 ~~the provision of services by a limited-services pregnancy center~~ about health
7 care services is an act in commerce.

8 (b) ~~Health care providers certified, registered, or licensed under Title 26 of~~
9 ~~the Vermont Statutes Annotated who are employed by, contracted to provide~~
10 ~~services for or on behalf of, or volunteer to provide services at a limited-~~
11 ~~services pregnancy center shall be responsible for conducting and providing~~
12 ~~health care services, information, and counseling at the center. The failure of a~~
13 ~~health care professional certified, registered, or licensed under Title 26 of the~~
14 ~~Vermont Statutes Annotated to conduct or to ensure that health care services,~~
15 ~~information, and counseling at the limited-services pregnancy services center~~
16 ~~are conducted in accordance with State law and professional standards of~~
17 ~~practice may constitute unprofessional conduct under 3 V.S.A. § 129a and 26~~
18 ~~V.S.A. § 1354. [Repealed.]~~

19 (c) The Attorney General has the same authority to make rules, conduct
20 civil investigations, and bring civil actions with respect to violations of

1 ~~subsection (a)~~ of this section as provided under subchapter 1 of this chapter.

2 Sec. 2. 18 V.S.A. § 5222 is amended to read:

3 § 5222. REPORTS

4 (a)(1) The following fetal deaths shall be reported by the hospital,
5 physician, or funeral director directly to the Commissioner within seven days
6 after delivery on forms prescribed by the Department:

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

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

12 ~~(3)~~(2) Spontaneous abortions and ectopic pregnancies of less than 20
13 weeks gestation are not required to be reported.

14 (b) The physician who treats a woman as a result of a miscarriage or
15 abortion shall report the fetal death if it is not known to be previously reported
16 under subsection (a) of this section. If there is evidence of violence or other
17 unusual or suspicious circumstances, the medical examiner shall be
18 immediately notified, and ~~he or she~~ the medical examiner shall complete at
19 least the medical items on the report. If a funeral director is to be involved, the
20 physician may delegate to the funeral director the responsibility for completing
21 items other than those of a medical nature. Similarly, the physician may

1 delegate the responsibility for completion of nonmedical items to appropriate
2 personnel having access to records containing the information.

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

5 (d) Fetal death reports made pursuant to subsection (a) of this section are
6 for statistical purposes only and are not public records. They shall be kept
7 confidential and shall be destroyed after five years.

8 Sec. 3. 26 V.S.A. § 1354 is amended to read:

9 § 1354. UNPROFESSIONAL CONDUCT

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

13 * * *

14 (2) all advertising of health care services or a medical business that is
15 intended or has a tendency to confuse, mislead, or deceive the public or impose
16 upon credulous or ignorant persons and so be harmful or injurious to public
17 morals or safety;

18 * * *

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

1 (B) failing to provide active oversight over treatment or other health
2 care services that are provided using or relying upon the licensee's name or
3 license;

4 (C) failing to actively monitor the education, training, and experience of
5 individuals providing treatment or other health care services that are provided
6 using or relying upon the licensee's name or license; or

7 (D) failing to review and approve information about treatment or health
8 care services that are provided using or relying upon the licensee's name or
9 license prior to communication of the information to users or potential users of
10 the treatment or services;

11 * * *

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

16 * * *

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

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

3 (ii) establishment of documented diagnosis through the use of
4 accepted medical practices; and

5 (iii) maintenance of a current medical record;

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

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

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

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

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

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

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

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

5 * * *

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

10 (1) performance of unsafe or unacceptable patient care; or

11 (2) failure to conform to the essential standards of acceptable and
12 prevailing practice.

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

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

1 ~~(A)~~(1) the health care provider providing or assisting in the provision of
2 legally protected health care activity; or

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

6 ~~(2)~~(c) Definitions. As used in this ~~subsection~~ section:

7 ~~(A)~~(1) “Health care provider” means a person who provides professional
8 health care services to an individual during that individual’s medical care,
9 treatment, or confinement.

10 ~~(B)~~(2) “Health care services” means services for the diagnosis,
11 prevention, treatment, cure, or relief of a physical or mental health condition,
12 including counseling, procedures, products, devices, and medications.

13 ~~(C)~~(3) “Legally protected health care activity” has the same meaning as
14 in 1 V.S.A. § 150.

15 Sec. 4. 26 V.S.A. § 1582 is amended to read:

16 § 1582. REGULATORY AUTHORITY; UNPROFESSIONAL CONDUCT

17 (a) The Board may deny an application for licensure, renewal, or
18 reinstatement; revoke or suspend any license to practice issued by it; or
19 discipline or in other ways condition the practice of an applicant or licensee
20 upon due notice and opportunity for hearing if the person engages in the
21 following conduct or the conduct set forth in 3 V.S.A. § 129a:

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* * *

(3) engaging in conduct of a character likely to confuse, mislead,
deceive, defraud, or harm the public;

* * *

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

(B) failing to provide active oversight over treatment or other health
care services that are provided using or relying upon the licensee's name or
license;

(C) failing to actively monitor the education, training, and experience of
individuals providing treatment or other health care services that are provided
using or relying upon the licensee's name or license; or

(D) failing to review and approve information about treatment or health
care services that are provided using or relying upon the licensee's name or
license prior to communication of the information to users or potential users of
the treatment or services;

* * *

(c) As used in this section, "health 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 * * *

4 Sec. 5. 26 V.S.A. § 1615 is amended to read:

5 § 1615. ADVANCED PRACTICE REGISTERED NURSES;

6 REGULATORY AUTHORITY; UNPROFESSIONAL CONDUCT

7 (a) In addition to the provisions of 3 V.S.A. § 129a and section 1582 of this
8 chapter, the Board may deny an application for licensure, renewal, or
9 reinstatement or may revoke, suspend, or otherwise discipline an advanced
10 practice registered nurse upon due notice and opportunity for hearing if the
11 person engages in the following conduct:

12 * * *

13 (6) ~~Providing~~ Except as otherwise provided in subsection (b) of this
14 section, providing, prescribing, dispensing, or furnishing medical services or
15 prescription medication or prescription-only devices to a person in response to
16 any communication transmitted or received by computer or other electronic
17 means when the licensee fails to take the following actions to establish and
18 maintain a proper provider-patient relationship:

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

1 (B) establishment of documented diagnosis through the use of
2 accepted medical practices; and

3 (C) maintenance of a current medical record.

4 * * *

5 (13)(A) Permitting one's name or license to be used by a person, group,
6 or corporation when not actually in charge of or responsible for the treatment
7 given or other health care services provided;

8 (B) failing to provide active oversight over treatment or other health
9 care services that are provided using or relying upon the APRN's name or
10 license;

11 (C) failing to actively monitor the education, training, and experience
12 of individuals providing treatment or other health care services that are
13 provided using or relying upon the APRN's name or license; or

14 (D) failing to review and approve information about treatment or
15 health care services that are provided using or relying upon the APRN's name
16 or license prior to communication of the information to users or potential users
17 of the treatment or services.

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

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

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

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

6 (C) prescribing for a patient examined by a licensed APRN,
7 physician assistant, or other practitioner authorized by law and supported by
8 the APRN;

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

13 (E) continuing medication on a short-term basis for a new patient
14 prior to the patient's first appointment; or

15 ~~(E)~~(F) emergency situations where the life or health of the patient is
16 in imminent danger.

17 (c) As used in this section, "health services" means services for the
18 diagnosis, prevention, treatment, cure, or relief of a physical or mental health
19 condition, including counseling, procedures, products, devices, and
20 medications.

1 Sec. 6. 26 V.S.A. § 1736 is amended to read:

2 § 1736. UNPROFESSIONAL CONDUCT

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

7 * * *

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

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

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

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

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

18 * * *

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

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

3 Sec. 7. 26 V.S.A. § 1842 is amended to read:

4 § 1842. UNPROFESSIONAL CONDUCT

5 (a) A person licensed as an osteopathic physician under this chapter shall
6 not engage in unprofessional conduct. If such conduct is committed by an
7 applicant, it shall be grounds for denial of a license.

8 (b) Unprofessional conduct means the following conduct and conduct set
9 forth in 3 V.S.A. § 129a:

10 * * *

11 (9) Delegating professional responsibilities, including the delivery of
12 health care services, to a person ~~who~~ whom the licensee knows or has reason to
13 know is not qualified by training, experience, or licensure to perform them.

14 * * *

15 (14)(A) Permitting one's name or license to be used by a person, group,
16 or corporation when not actually in charge of or responsible for the treatment
17 or other health care services provided;

18 (B) failing to provide active oversight over treatment or other health
19 care services that are provided using or relying upon the licensee's name or
20 license;

1 (C) failing to actively monitor the education, training, and experience
2 of individuals providing treatment or other health care services that are
3 provided using or relying upon the licensee’s name or license; or

4 (D) failing to review and approve information about treatment or
5 health care services that are provided using or relying upon the licensee’s name
6 or license prior to communication of the information to users or potential users
7 of the treatment or services.

8 (c) As used in this section, “health services” means services for the
9 diagnosis, prevention, treatment, cure, or relief of a physical or mental health
10 condition, including counseling, procedures, products, devices, and
11 medications.

12 Sec. 8. 26 V.S.A. § 2024 is added to read:

13 § 2024. CONFIDENTIALITY OF PRESCRIBER INFORMATION ON
14 MEDICATIONS FOR LEGALLY PROTECTED HEALTH CARE
15 ACTIVITY

16 (a) As used in this section, “gender-affirming health care services” and
17 “reproductive health care services” have the same meanings as in 1 V.S.A.
18 § 150.

19 (b) Upon the request of a prescribing practitioner and to the extent not
20 expressly prohibited under federal law, a pharmacist shall not list the
21 practitioner’s name on a fulfilled prescription for medication for gender-

1 affirming health care services or reproductive health care services but shall
2 instead list the name of the facility at which the practitioner is employed or is a
3 contract employee.

4 (c) Nothing in this chapter or the rules governing the pharmacy profession
5 shall be construed to require a pharmacist to list the prescribing practitioner's
6 name on a fulfilled prescription for medication for gender-affirming health
7 care services or reproductive health care services.

8 Sec. 9. 26 V.S.A. § 4132 is amended to read:

9 § 4132. UNPROFESSIONAL CONDUCT

10 (a) The following conduct and conduct set forth in 3 V.S.A. § 129a by a
11 person licensed as a naturopathic physician under this chapter or an applicant
12 for licensure constitutes unprofessional conduct:

13 * * *

14 (12) Delegating professional responsibilities, including the delivery of
15 health care services, to a person whom the licensee knows or has reason to
16 know is not qualified by training, experience, or licensure to perform them.

17 (13)(A) Permitting one's name or license to be used by a person, group,
18 or corporation when not actually in charge of or responsible for the treatment
19 or other health care services provided;

