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VIA EMAIL TO MEMBERS

May 10, 2023

Vermont State Assembly
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Senator David Weeks
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Senator Terry Williams
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Re: *SB151 – Illegality of Vaccinating Minors Absent Parental Consent*

Dear Vermont State Assembly Members:

We write regarding Senate Bill 151 (“**SB151**”)¹ to advise you that permitting the vaccination of minors without parental consent violates federal law. In its current form, SB151 is drafted such that, among other things, it would allow minors of any age to give express consent to vaccines for the prevention of sexually transmitted diseases without parental consent or knowledge. Our firm recently challenged a similar law in Washington, D.C., and prevailed in federal court. Likewise, should SB151 become law, we have been directed to challenge it on the same grounds.

Federal law requires that parents of a child receive the federally created vaccine information statement (“**VIS**”) from the individual intending to administer a vaccine. This requirement applies before each administration of a vaccine. As provided in 42 U.S.C. § 300aa-26(d), part of the National Childhood Vaccine Injury Act (“**NCVIA**”):

each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the [VIS] ... supplemented with visual presentations or oral explanations, in appropriate cases. Such materials shall be provided prior to the administration of such vaccine.

For the purposes of this section: “The term ‘legal representative’ means a parent or an individual who qualifies as a legal guardian under State law.” 42 U.S.C. § 300aa-33. Thus, under

¹ See Senate Bill No. 151 (April 27, 2023), available at <https://legislature.vermont.gov/bill/status/2024/S.151>.

federal law, a medical practitioner must provide the VIS with appropriate supplemental explanations to the legal guardian of a child prior to injecting the child with a vaccine.

This federal law is critical for assuring vaccine safety. This is because federal law provides pharmaceutical companies with immunity from liability for injuries caused by their childhood vaccine products. To fill the resulting safety gap, Congress wanted to make sure that parents were informed of, among other things, the reasons a vaccine should not be administered to their child, what they should do if an injury occurs, and the fact that if the injury was serious, they could file a claim in the vaccine injury compensation program (“VICP”).

Even putting aside the reason adhering to this federal law is important, state law simply cannot conflict with federal law. And federal law is clear that the parent of a child must receive a VIS prior to administering a vaccine, each time, and from the person intending to administer the vaccine. It would therefore be a direct violation of federal law to permit the person administering the vaccine to vaccinate a minor without first providing a VIS to the parent and giving him or her the opportunity to inform the healthcare provider of any contraindications as listed on the VIS, address any reactions that occur thereafter, and be in a position to file in the VICP for any injuries.

A federal court, in a decision that was not appealed, held precisely that when striking down a D.C. law that permitted vaccination without parental consent. The judge found:

Two crucial exchanges of information lie at the heart of the NCVIA. The first is the exchange of information from parent to doctor. Healthcare providers recommend against vaccinations if individuals reacted poorly to past immunizations. A VIS [Vaccine Information Statement] describes the risks of certain vaccines and explains when they are contraindicated...By removing the parent from the vaccine decision, the [D.C. law allowing children to be vaccinated without parental consent or knowledge] undercuts a key purpose of the VIS and a safety check before the vaccination.

and

[T]he [D.C. law allowing children to be vaccinated without parental consent or knowledge] encourages children to deceive their parents. Once a child has gone behind her parents’ backs to get a vaccine, what is she supposed to do if she has a negative reaction? Some children might tell their parents; others very well might be afraid and try to hide their actions. Besides the obvious medical risk such a situation entails, this throws a wrench in the NCVIA’s goal of ‘[f]ast, informal adjudication’ of vaccine injuries.²

We hope that you will respect our system of governance in which federal law takes precedence over state law. If you do not like the federal law requirement, then you are, of course, free to lobby Congress to change the law. But until that happens, the Vermont legislature should

² See Order and Memorandum Opinion, *Mazur v. D.C. Dep’t. of Health*, 1:21-cv-01782 (D.D.C., March 18, 2023) available at <https://www.sirillp.com/wp-content/uploads/2023/04/Mazer-Ruling-3126e9bc223f559254625fb85b7b0b42.pdf>.

act in accordance with federal law and desist from passing SB151. Again, if it chooses to pass this bill, despite clear knowledge that it would violate federal law, we have been authorized to bring a lawsuit to strike it down.

Very truly yours,

/s/ Aaron Siri
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Elizabeth A. Brehm, Esq.
Dana Smith, Esq.