



# MAINE MEDICAL ASSOCIATION

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## TESTIMONY OF THE MAINE MEDICAL ASSOCIATION IN SUPPORT OF

### **L.D. 1056, AN ACT TO INCREASE THE AVAILABILITY OF INDEPENDENT MEDICAL EXAMINERS UNDER THE WORKERS' COMPENSATION ACT OF 1992**

Joint Standing Committee on Labor, Commerce, Research & Economic Development  
Room 208, Cross State Office Building  
Wednesday, April 13, 2011, 1:00 p.m.

Good afternoon Senator Rector, Representative Prescott, and Members of the Joint Standing Committee on Labor, Commerce, Research, & Economic Development. My name is Andrew MacLean and I am speaking in support of L.D. 1056 on behalf of the Maine Medical Association (MMA). The MMA is a professional association of more than 3400 Maine physicians, residents, and medical students whose mission is "to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens."

The MMA urges passage of L.D. 1056 to expand the pool of physicians who may be chosen by the Workers' Compensation Board to serve as Independent Medical Examiners under §312 of the Act. Current law restricts physicians who have provided employer-requested examinations under §207 of the Act from serving as IMEs. Experience at the Board demonstrates that it has been very difficult to recruit physicians to serve as IMEs. I see two principal reasons for this recruitment problem. First, we have a significant physician shortage in Maine and, therefore, most physicians are not looking for additional work. Second, not all physicians have the skills, temperament, or interest in medical-legal work of this nature. The MMA understands the concern of some stakeholders in the workers' compensation system about the potential for bias among physicians who derive a substantial portion of their income from providing §207 exams, but we believe that the process of review of IME applicants by the Board staff and IME subcommittee is adequate to address that concern.

Also, I have attached to my testimony, two opinions from the AMA's Code of Medical Ethics that provide guidance to physicians acting in these roles: *Opinion 10.03, Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations* and *Opinion 5.09, Confidentiality: Industry-Employed Physicians and Independent Medical Examiners*.

Thank you for considering the views of the MMA on L.D. 1056 and I would be happy to respond to any questions you may have.


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## E-10.03 Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations

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### E-10.03 Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations

When a physician is responsible for performing an isolated assessment of an individual's health or disability for an employer, business, or insurer, a limited patient-physician relationship should be considered to exist. Both "Industry Employed Physicians" (IEPs), who are employed by businesses or insurance companies for the purpose of conducting medical examinations, and Independent Medical Examiners" (IMEs), who are independent contractors providing medical examinations within the realm of their specialty, may perform such medical examinations.

Despite their ties to a third party, the responsibilities of IEPs and IMEs are in some basic respects very similar to those of other physicians. IEPs and IMEs have the same obligations as physicians in other contexts to: (1) Evaluate objectively the patient's health or disability. In order to maintain objectivity, IEPs and IMEs should not be influenced by the preferences of the patient-employee, employer, or insurance company when making a diagnosis during a work-related or independent medical examination. (2) Maintain patient confidentiality as outlined by Opinion 5.09, "Industry Employed Physicians and Independent Medical Examiners." (3) Disclose fully potential or perceived conflicts of interest. The physician should inform the patient about the terms of the agreement between himself or herself and the third party as well as the fact that he or she is acting as an agent of that entity. This should be done at the outset of the examination, before health information is gathered from the patient-employee. Before the physician proceeds with the exam, he or she should ensure to the extent possible that the patient understands the physician's unaltered ethical obligations, as well as the differences that exist between the physician's role in this context and the physician's traditional fiduciary role.

IEPs and IMEs are responsible for administering an objective medical evaluation but not for monitoring patients' health over time, treating patients, or fulfilling many other duties traditionally held by physicians. Consequently, a limited patient-physician relationship should be considered to exist during isolated assessments of an individual's health or disability for an employer, business, or insurer.

The physician has a responsibility to inform the patient about important health information or abnormalities that he or she discovers during the course of the examination. In addition, the physician should ensure to the extent possible that the patient understands the problem or diagnosis. Furthermore, when appropriate, the physician should suggest that the patient seek care from a qualified physician and, if requested, provide reasonable assistance in securing follow-up care. (I) Issued December 1999 based on the report "Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations," adopted June 1999.



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## E-5.09 Confidentiality: Industry-Employed Physicians and Independent Medical Examiners

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### E-5.09 Confidentiality: Industry-Employed Physicians and Independent Medical Examiners

Where a physician's services are limited to performing an isolated assessment of an individual's health or disability for an employer, business, or insurer, the information obtained by the physician as a result of such examinations is confidential and should not be communicated to a third party without the individual's prior written consent, unless required by law. If the individual authorized the release of medical information to an employer or a potential employer, the physician should release only that information which is reasonably relevant to the employer's decision regarding that individual's ability to perform the work required by the job. When a physician renders treatment to an employee with a work-related illness or injury, the release of medical information to the employer as to the treatment provided may be subject to the provisions of worker's compensation laws. The physician must comply with the requirements of such laws, if applicable. However, the physician may not otherwise discuss the employee's health condition with the employer without the employee's consent or, in the event of the employee's incapacity, the appropriate proxy's consent. Whenever statistical information about employees' health is released, all employee identities should be deleted. (IV) Issued July 1983; Updated June 1994; updated June 1996; updated December 1999 based on the report "Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations," adopted June 1999.