



MAINE MEDICAL ASSOCIATION

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TESTIMONY OF THE MAINE MEDICAL ASSOCIATION

IN OPPOSITION TO

LD 1491, AN ACT TO STRENGTHEN THE LAWS REGARDING CERTAIN CRIMES COMMITTED BY A PERSON IN A POSITION OF AUTHORITY

Joint Standing Committee on Criminal Justice & Public Safety
Room 436, State House
Wednesday, May 8, 2013, 1:30 p.m.

Good afternoon Senator Gerzofsky, Representative Dion and Members of the Joint Standing Committee on Criminal Justice and Public Safety. I am Jessa Barnard, Associate General Counsel for the Maine Medical Association, and I am speaking this afternoon in opposition to LD 1491, An Act To Strengthen the Laws Regarding Certain Crimes Committed by a Person in a Position of Authority.

The MMA is a professional association representing more than 3800 physicians, residents, and medical students in Maine whose mission is to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens.

In opposing LD 1491, the Medical Association in no way condones the behavior implicated in the proposal before you. Sexual contact between a licensed physician and patient is an extremely serious matter. It is one that is condemned by the American Medical Association Code of Ethics, which states that it exploits the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately be detrimental to the patient's wellbeing. (See Policy E-8.14 Sexual Misconduct in the Practice of Medicine.) Maine's Board of Licensure in Medicine also takes the issue very seriously and has a stand-alone rule on Sexual Misconduct, stating that sexual violations are egregious enough to warrant revocation of a physician's medical license. (See Board of Licensure in Medicine and Board of Osteopathic Licensure Rule Chapter 10). Physicians are in fact mandated by statute to report other physicians who have violated this rule to the Board. (See 24 MRSA Sec. 2505.)

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However, we do have concerns with Section 1 of the bill which states that there would be no statute of limitations for a civil action based on a sexual act committed by a health care provider who is providing mental health therapy. Patients who are violated in this way are likely to bring a cause of action for professional negligence – violating a professional duty of care. In Maine, as you know, professional negligence claims are governed by the Maine Health Securities Act. Such claims have their own statute of limitations found in 24 MRSA Section 2902. Generally, the statute of limitations is 3 years. LD 744 was considered in the Judiciary Committee just days ago. This bill proposed to change the statute of limitations for professional negligence claims in cases of sexual acts to 10 years. After careful consideration and based on compromise from the parties involved, the Committee voted last week to adopt a more limited extension – the statute of limitations would be extended to 6 years in cases of sexual acts committed by mental health therapists at the time they are providing therapy.

We have serious concerns about conflicts between the new statute of limitations being established by LD 744 in Title 24 for professional negligence cases and the bill before you. Further, the bill before you does not clearly define *when* the sexual act occurred – for example, during the course of the treating relationship - simply who committed it. Finally, there is a strong policy reason for the existence of some statute of limitations on civil cases. As you know, they are intended not only to provide defendants with some predictability and certainty, but also to maintain efficiency of the courts by increasing the chance that plaintiffs can bring evidence that is still provable. This is particularly the case in instances where the evidence will largely be one's memory and recount of the incident.

Thank you for considering the MMA's views on the bill and I would be happy to respond to any questions you may have.