TESTIMONY OF THE MAINE MEDICAL ASSOCIATION
AND
THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS - MAINE SECTION
IN OPPOSITION TO
L.D. 760, AN ACT REGARDING INFORMED CONSENT FOR AN ABORTION
L.D. 1339, AN ACT TO STRENGTHEN THE CONSENT LAWS FOR ABORTIONS PERFORMED ON MINORS AND INCAPACITATED PERSONS
L.D. 1193, AN ACT TO ALLOW A WRONGFUL DEATH CAUSE OF ACTION FOR THE DEATH OF AN UNBORN CHILD

Joint Standing Committee on Judiciary
Room 438, State House
Thursday, May 16, 2013, 1 p.m.

Good afternoon Senator Valentino, Representative Priest, and Members of the Joint Standing Committee on Judiciary. My name is Andrew MacLean, the Deputy Executive Vice President of the Maine Medical Association. I speak today in opposition to all of the abortion bills before you on behalf of the Maine Medical Association (MMA) and the American College of Obstetricians and Gynecologists - Maine Section (Maine ACOG).

The MMA is a professional association of more than 3800 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 Maine Section of the American College of Obstetricians and Gynecologists represents approximately 150 Maine physicians specializing in women's health care issues.

The moral and ethical issue of abortion is a difficult one for all segments of our society and physicians are no different from other Americans on this issue. The decision to support or oppose abortion, therefore, is a matter for physicians to decide individually, based upon personal values or beliefs. No medical society or hospital administration will compel a physician to perform abortions against firmly held moral principles. However, abortion currently is a legal medical procedure in our country and we believe strongly that the decision about the medical necessity of and propriety of a particular medical procedure must be left to the patient and her physician acting in conformity with standards of good medical care.

The abortion debate in this country is marked by different but important values and the diversity of beliefs should be respected. The MMA opposes abortion legislation that does not respect this diversity of beliefs. We oppose legislation intended to intimidate physicians and other health care providers and their families, and to obstruct patients' access to safe abortions. We oppose the harassment of abortion providers and patients as well as legislation that seeks to differentiate them from the medical community as a whole. It is on these principles that we oppose the bills before you today.

We all share a common goal of preventing unintended pregnancy and reducing the need for abortion in Maine. In hearings on similar bills in years past, the Maine CDC has provided this Committee with evidence that Maine has been successful in pursuing this goal because of two major factors:

- Free or low cost access to preventive reproductive health care through Maine’s system of family planning clinics; and
• A standard of comprehensive family life education that begins with abstinence and provides full information to our youth.

Maine’s current laws on minors’ rights to confidential health care treatment have furthered our pursuit of this goal.

I will comment briefly on each of the bills before you today.

**L.D. 760, An Act Regarding Informed Consent for an Abortion**

L.D. 760 represents an unwarranted intrusion in the physician-patient relationship. The MMA generally opposes legislative or regulatory interference in the process of obtaining informed consent to treatment between a physician and patient - - a very personal discussion that is at the heart of the physician-patient relationship. According to Opinion 8.08, *Informed Consent* of the AMA Code of Medical Ethics, the physician must enable the patient's right to make his or her own determination on treatment by ensuring that the patient has enough information to make an intelligent choice. Consequently, a physician already has an ethical obligation to help the patient make choices from among the full range of therapeutic alternatives consistent with good medical practice. The practitioner must tailor the information presented during an informed consent conversation to the patient’s particular circumstances, and base it on the dual pillars of information and voluntariness. Transmitting unwanted and potentially irrelevant information as required by LD 760 could actually be considered an abdication of professional obligations as it would mandate the practitioner to provide information the patient may not want to receive.
L.D. 1399, An Act to Strengthen the Consent Laws for Abortions Performed on Minors and Incapacitated Persons

I have attached for your consideration in your deliberations on this bill, AMA Ethics Opinion 2.015, *Mandatory Parental Consent to Abortion.* As you will see, the opinion encourages minor patients to discuss their pregnancy with their parents, but recognizes that such a sensitive decision must be made by the patient with the medical advice of her physician and the counseling of adult advisors with whom she is comfortable. Maine's current abortion laws ensure appropriate adult involvement in this decision-making process, but recognize that, for a variety of reasons, a minor may not be comfortable involving a parent in that process. Maine’s current law on a minor’s right to an abortion is a national model that has been in place for more than 20 years. It is pragmatic and flexible enough to meet the needs of the broad range of minor patients and physicians as they face one of life’s most difficult challenges. The process for approval of an abortion outlined in L.D. 1339 is so complex and unwieldy that we fear it would effectively obstruct a minor from obtaining an abortion. As examples of this complexity, I would point out the requirement for the parent to provide government-issued proof of identity and written documentation establishing themselves as the parent or guardian of the minor (page 2 of the bill); the requirement for a physician declaration in addition to consent statements signed by the minor and parent/alternative consenter (page 5 of the bill); the intrusive and burdensome reporting requirements of the proposed §1597-B(8) (page 6 of the bill); and the requirement that a court considering a patient’s petition to apply the higher standard of proof, “clear and convincing” evidence and to “issue written and specific factual findings and conclusions of law supporting its decision” (page 7 of the bill).
LD 1193, An Act to Allow a Wrongful Death Cause of Action for the Death of an Unborn Child

This bill will establish in law that a fetus is “viable” after 12 weeks gestation and will allow for a wrongful death lawsuit on behalf of such a fetus against a health care provider who treats a pregnant woman with the knowledge that the woman is pregnant. This raises many concerns with our physicians. One of our surgeons gave the example of a pregnant woman coming to the emergency room after a car crash. If she needs emergency surgery and unfortunately the fetus does not survive while the woman’s life is saved, the physician could be liable in a wrongful death lawsuit. We also have concerns of placing into statute a definition of viability at 12 weeks. Thanks to modern care standards, the survival rate for very premature infants has risen, yet the threshold of human viability seems to be limited to the physiologic development of the lungs that takes place around weeks 22 to 24. Stating that viability begins at 12 weeks has not only has serious implications for the legal standing of a fetus and limiting access to abortions, but for woman’s expectations for their pregnancies.

Conclusion

The MMA and Maine Section - ACOG urge the Judiciary Committee to reject these 3 abortion bills. The Maine Legislature and the People of Maine should allow the patient and her physician to determine the most appropriate course of treatment based upon accepted standards of medical care and upon the patient's individual circumstances.

Thank you for considering the views of the MMA and Maine ACOG on these bills. I would be happy to respond to any questions you may have.