



TESTIMONY OF THE MAINE MEDICAL ASSOCIATION

NEITHER FOR NOR AGAINST

L.D. 911, AN ACT TO PROHIBIT CERTAIN GIFTS TO HEALTH CARE PRACTITIONERS

Joint Standing Committee on Labor, Commerce, Research & Economic Development
Room 208, Cross State Office Building
Tuesday, April 11, 2017, 1:00 p.m.

Good afternoon Senator Volk, Representative Fecteau, and Members of the Joint Standing Committee on Labor, Commerce, Research & Economic Development. I am Gordon Smith of East Winthrop, Maine and I am testifying today on behalf of the Maine Medical Association which I serve as Executive Vice President.

The MMA is a professional organization representing more than 4000 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.

The MMA is testifying "neither for nor against" L.D. 911 because the language is consistent with current practices and with the relevant provision in the *Code of Medical Ethics* of the American Medical Association. Opinion 9.6.2 of the *Code*, entitled *Gifts to Physicians from Industry*, recognizes that gifts to physicians from industry carry the risk of subtly influencing - or being perceived to bias - professional judgment in the care of patients. I have attached a copy of the provision to my testimony.

Given that the practices prohibited in the proposed legislation are already considered unethical and the health care practitioner licensing boards have authority to enforce the provisions of codes of ethics as professional standards of practice, the bill is unnecessary. On the other hand, the *AMA Code of Medical Ethics* applies to physicians and while other health professionals who prescribe or dispense medication may have similar codes and standards of practice, we have not done an exhaustive search of these codes.

L.D. 911 amends the *Maine Pharmacy Act*, which regulates the conduct of pharmacists primarily but does have some impact on manufacturers and wholesalers of drugs. But, the drug companies and their sales forces are largely regulated by federal law. The federal "sunshine" act, enacted as part of the *Affordable Care Act*, does require reporting and disclosure of payments to prescribers by manufacturers or their agents. But, disclosure and reporting is one issue, and the prohibition of such payments and gifts is another. I am not certain that the *Maine Pharmacy Act* is the best location of these prohibitions if you elect to move this bill forward.

In closing, the Maine Medical Association sees some benefit in the bill, but also recognizes that it needs to be carefully considered in conjunction with the federal law and provisions of professional ethics. We will plan to be at your work session and I would be pleased to answer any questions that you have today.

9.6.2 Gifts to Physicians from Industry

Relationships among physicians and professional medical organizations and pharmaceutical, biotechnology, and medical device companies help drive innovation in patient care and contribute to the economic well-being of the community to the ultimate benefit of patients and the public. However, an increasingly urgent challenge for both medicine and industry is to devise ways to preserve strong, productive collaborations at the same time that they take clear, effective action to prevent relationships that damage public trust and tarnish the reputation of both parties.

Gifts to physicians from industry create conditions that carry the risk of subtly biasing—or being perceived to bias—professional judgment in the care of patients.

To preserve the trust that is fundamental to the patient-physician relationship and public confidence in the profession, physicians should:

- (a) Decline cash gifts in any amount from an entity that has a direct interest in physicians' treatment recommendations.
- (b) Decline any gifts for which reciprocity is expected or implied.
- (c) Accept an in-kind gift for the physician's practice only when the gift:
 - (i) will directly benefit patients, including patient education;
 - (ii) is of minimal value.
- (d) Academic institutions and residency and fellowship programs may accept special funding on behalf of trainees to support medical students', residents', and fellows' participation in professional meetings, including educational meetings, provided that:
 - (i) the program identifies recipients based on independent institutional criteria;
 - (ii) funds are distributed to recipients without specific attribution to sponsors.

AMA Principles of Medical Ethics: II

Issued: 1993

Updated: 2014

Opinions on Related Matters:

- 1.1.1** Patient-Physician Relationships
- 1.2.8** Gifts from Patients
- 7.1.4** Conflicts of Interest in Research
- 9.2.6** Continuing Medical Education
- 9.2.7** Financial Relationships with Industry in Continuing Medical Education
- 11.2.2** Conflicts of Interest in Patient Care