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TESTIMONY OF THE MAINE MEDICAL ASSOCIATION

IN OPPOSITION TO

L.D. 1919, AN ACT TO CRIMINALIZE THE FAILURE TO MAKE A REPORT OF CHILD ABUSE OR NEGLECT AS REQUIRED BY STATUTE

Joint Standing Committee on Health & Human Services
Room 209, Cross State Office Building, Augusta, Maine
Monday, August 27, 2018, 9:30 a.m.

Good Morning Senator Brakey, Representative Hymanson, and Members of the Joint Standing Committee on Health & Human Services. I am Gordon Smith, Executive Vice President of the Maine Medical Association (MMA) and I am here today to express our opposition to L.D. 1919.

The MMA is a professional organization representing more than 4300 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 recognizes and appreciates Governor LePage's long-standing concern for the welfare of underprivileged children and those under the state's care especially. In the aftermath of recent tragedies in our state, we understand the Governor's interest in improving the responsiveness of the state's child protective services system. However, we do not believe that criminalizing the "failure to report" indicators of "child abuse or neglect" will be an appropriate incentive for those individuals currently required to report under 22 M.R.S.A. §4011-A to becoming involved in often difficult, dysfunctional family situations. Nor are we aware that any of the recent tragic cases were the result of a failure of any mandated reporter to report.

Current law provides sanctions for a "failure to report" by those required to report under §4011-A. Within the Child and Family Services and Child Protection Act itself, §4009 establishes that "[a] person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than \$500 may be adjudged." In addition to this sanction, a "failure to report" would subject a physician to potential action against his or her professional license under 32 M.R.S.A. §3282-A (for allopathic physicians) or 32 M.R.S.A. §2591-A (osteopathic physicians). We are concerned that adding a potential criminal sanction to the threat against one's professional license and the civil penalty would have the opposite of the intended impact. It would instill more fear and discomfort in individuals required to report under §4011-A thereby discouraging them from "becoming involved" in these difficult cases.

I also note that the recent OPEGA report in discussing the current mandated reporting law did not recommend criminal penalties, but did recommend guidance and additional training for mandated reporters.

Rather than establishing a criminal sanction for “failure to report,” we also believe that more training opportunities for individuals required to report under §4011-A would be a stronger component of this package of bills to improve the responsiveness of the state’s child protective services system. The MMA has been offering continuing medical education (CME) on the various laws that are unique to health care practitioners treating children including not just the “mandatory reporting” laws, but also the laws on consent to treatment and the privacy of protected health care information. This curriculum has been one of our popular courses for pediatricians, family physicians, and other primary care practitioners. Moreover, the Maine Chapter of the American Academy of Pediatrics has planned a relevant educational session to be offered in conjunction with the MMA’s 165th Annual Session in Bar Harbor on Saturday, September 8, 2018. Lawrence Ricci, M.D., F.A.A.P. will present *Child Abuse Suspicion, Identification & Reporting: How we get it right and how and why we get it wrong*, for which 2.0 CME credits will be offered. The 127th Maine Legislature amended §4011-A to include a training requirement in L.D. 622, An Act to Require Training of Mandated Reporters under the Child Abuse Laws (P.L. 2015, Chapter 407). Section 4011-A(9) requires completion of “mandated reporter training approved by the department” once every 4 years.

Thank you for considering the views of the MMA on L.D. 1919. We urge you not to include this criminalization of a “failure to report” in your final package of legislation addressing the state’s child protective services system. I would be happy to respond to any questions you may have.

165th Annual Session September 7-9, 2018 Bar Harbor, Maine

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