



TESTIMONY OF ALICIA REA, ESQ.
LD 1277 – Ought to Pass

**An Act Regarding Controlled Substances
Prescription Monitoring Activities**

Joint Standing Committee on Health & Human Services
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Senator Ingwersen, Representative Meyer and members of the Joint Standing Committee on Health and Human Services, greetings. My name is Alicia Rea, and I am a policy fellow for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, we urge you to support LD 1277.

The ACLU of Maine advocates for policies that protect Maine patients and providers from intrusions into their private, medical relationships. Few things are more private than a person's medical wellbeing and their decisions about medical treatments. This is especially true for medical decisions that do not affect broader public health, such as those that involve a testosterone prescription.

All people should be empowered to decide what private information they share about themselves and when. Our prescription information is among the most sensitive day-to-day information affecting most people. The ACLU of Maine fights to ensure medical privacy across the board—whether through ensuring patient privacy and control of their information, or exposing the risks of large databases carrying such information. Some conditions and treatments expose patients to potential discrimination from employers, landlords, and others due to stereotypes or other unfounded fears. Medical information is nobody's business except the patient and the necessary health care providers involved, and should be maintained in the highest confidence.

Maine's prescription drug monitoring program (PMP) law allows the Department of Health and Services to share prescription data with other states and certain Canadian provinces.¹ This means that people outside of the state could access sensitive medical information about Maine patients and providers, particularly for legal investigations. While the law is well-intentioned to protect public health, the PMP does not have to follow HIPAA privacy rules.² Consequently, sensitive medical information could be used to investigate and prosecute transgender patients and their providers under

¹ 22 M.R.S. §7250(4-A).

² See Congressional Research Service, *Private Health Information and Prescription Drug Monitoring Programs (PDMPs)*, at 1, available at <https://www.congress.gov/crs-product/IF11042>.



other jurisdictions' laws, despite that care and those medical practices being legal in Maine and following health care organizations' guidance for best practices.

A patient's prescription records can reveal a great deal of private medical information beyond the medication prescribed. Because many medications are approved only for treatment of specific diseases or disorders, "[i]nformation contained in prescription records . . . may reveal other facts about what illnesses a person has."³ Data on patients who use testosterone and providers who prescribe testosterone may also be used to scrutinize prescriptions used for other medical conditions unrelated to gender dysphoria, such as low testosterone in cisgender men.

LD 1277 would help both providers and patients by removing the requirement of reporting testosterone prescriptions to the PMP. Indeed, LD 1277 would advance the purpose of Maine's PMP statute, which is "to promote the public health and welfare and to detect and prevent substance use disorder . . . [and] not intended to interfere with the legitimate medical use of controlled substances."⁴

Testosterone is an inappropriate medication to be part of the PMP since it is safe, effective, and non-addictive.⁵ By allowing providers to freely prescribe the medication that their patients need without input into the PMP, this bill removes an opportunity for interference by other governments into Mainers' privacy.

We urge you to vote that LD 1277 ought to pass.

³ *Douglas v. Dobbs*, 419 F.3d 1097, 1102 (10th Cir. 2005); *accord Doe v. Se. Pa. Transp. Auth.*, 72 F.3d 1133, 1138 (3d Cir. 1995) ("It is now possible from looking at an individual's prescription records to determine that person's [diagnoses], or even to ascertain such private facts as whether a woman is attempting to conceive a child through the use of fertility drugs.").

⁴ §7245.

⁵ Rick Collins, *Changing the Game: The Congressional Response to Sports Doping via the Anabolic Steroid Control Act*, 40 NEW ENG. L. REV. 753, 754 (2005).