



THE MALLOY FIRM

Attorney. Advisor. Advocate.

LD 1399, HP 894

"An Act to Improve State Oversight of Proposed Health Care Entity Transactions."

Testimony of Michael S. Malloy in opposition

Ladies and gentlemen of the committee:

My name is Michael Malloy. I am an attorney in Auburn with a statewide practice advising independent medical professionals who run their own practices. I represent dozens of providers including dentists, osteopaths, audiologists, and other professionals serving Maine's population from Kittery to Calais. I am here in my own capacity to oppose LD 1399 and ask that you vote that it ought not pass. In the alternative, I respectfully request that this bill be substantially revised to exempt transactions between Maine's small independent health care providers from its reach.

A significant part of my law practice involves representing dentists in the purchase and sale of their practices. Maine's dental community remains a community of small business owners. The dentists who choose to live and practice throughout our rural state are highly skilled technicians with deep medical knowledge in their fields, and many of them are also entrepreneurs.

I imagine the proponents of this bill are seeking to retain the independence of Maine's medical providers in an era of large hospital networks and consolidation, as well as the involvement of private equity in the medical profession. However, as drafted, this bill will have the opposite effect of what I believe to be its intended outcome. Requiring public disclosure and State approval of an independent medical practice transition will reduce, not enhance, the number of professionals caring for Maine's population.

This bill will deter dentists from purchasing a practice in Maine. It is a competitive field and many of details of these transactions are confidential for good reason. Once it becomes publicly known that a practice is for sale, it becomes more difficult to retain essential staff and patients. This bill will immediately undermine confidence in these practices and is likely to devalue significantly, the goodwill that is usually the largest component in the value of a practice. That goodwill gets assigned a dollar amount as part of a practice sale, and the seller pays taxes on it. This is no less than a disguised taking of the equity that Maine's dentists, eye doctors, osteopaths, and other independent health care providers have worked a lifetime to establish. To put it in terms the Legislature might better understand, it would also deprive the State of the tax revenue on that goodwill.



Michael S. Malloy, Esq.
TEL 207-333-6700

2 Great Falls Plz., Ste. 6B-2
P.O. Box 3171
Auburn, ME 04212-3171

MALLOYFIRMMMAINE.COM
msm@malloyfirmmaine.com

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In an era of declining insurance and Mainecare reimbursement rates, it is already difficult enough to attract and retain medical professionals to Maine, and even more so outside of major metropolitan areas. The costs, public disclosure, and process that LD 1399 proposes would only exacerbate that challenge. On top of paying a broker, an accountant, yes, their lawyer, the attorney for the bank funding the transaction, an appraiser and other closing costs, we would now add an up front expense of "all reasonable costs incurred by the Attorney General" in deciding the merits of the practice transition. Not only that, but the determination is to be made by unelected staff and lawyers, who may have never run a business or received any medical training. The private practice community deserves far better.

For these reasons, I respectfully request that you vote down this bill as drafted.

Thank you for your consideration.