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GOVERNOR

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BOARD OF LICENSURE IN MEDICINE  
137 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0137

Maroulla S. Gleaton, MD  
CHAIR

Timothy E. Terranova  
EXECUTIVE DIRECTOR

March 4, 2024

Senator Donna Bailey, Chair  
Representative Anne Perry, Chair  
Committee on Health Coverage, Insurance and Financial Services  
100 State House Station  
Augusta, ME 04333

**Re: LD 227 – “An Act Regarding Health Care in the State”**

Dear Senator Bailey and Representative Perry:

The Maine Board of Licensure in Medicine (“BOLIM”) licenses and regulates allopathic physicians and physician assistants in Maine. BOLIM is composed of 11 members: 6 physicians who actively practice medicine; 2 physician assistants who actively render medical services; and 3 public members. BOLIM’s mission is to protect the public by ensuring its licensees are ethical, professional and competent. It fulfills this mission by licensing, regulating, and educating physician and physician assistants.

BOLIM offers the following comments neither in support of nor against LD 227:

In section 9002, the “Gender-affirming health care services” and “Reproductive health care services” definitions delegate the determination/definition of “accepted standard of care” to unidentified “major medical professional organizations and agencies with expertise in the field of gender-affirming care” [with the exception of World Professional Association for Transgender Health] and “major medical professional organizations and agencies with expertise in the relevant field.” The definitions provide no process for how this will be determined, leading to potential inconsistent treatment. These definitions are very broad giving rise to increased risk of impacting the professional health care licensing agencies both in delaying and impeding the ability to take appropriate action against licensees in the interest of patient protection. BOLIM recommends either allowing professional licensing agencies to make the determinations, as they currently do, or be granted rulemaking ability to establish how this standard of care is determined and by what entities.

In section 9002, the definition of “Legally protected health care activity” includes “regardless of whether the patient is located in this State or whether the health care practitioner is licensed in the state where the patient is located at the time the services is rendered.” This goes against all legal precedent that health care professional licensing applicability is based upon the location of

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the patient when the services are rendered and will significantly increase the risk of litigation regarding all licensing agency activities.

In section 9003, it is unclear whether the ability to initiate a civil action includes the ability to initiate an action against a Maine health care licensing agency, and/or its members and/or its staff. If so, a concern arises whether immunities are being unintentionally waived. If they are being waived, there may be practical concerns. There is also an increased risk that licensees will utilize the provision to delay or impede the licensing activities of licensing agencies and significantly delay their ability to move quickly in the interests of protecting the public. The exception does not eliminate this risk.

In Part E section 8012, the definition of “professional discipline” includes terms that are not technically “discipline” and does not include terms that are such as a surrender of license.

In Part F section 117-C BOLIM recommends that Paragraph C should be applicable to any investigation by the licensing agency. In addition, BOLIM recommends that the health care entity should not be in a position to make a determination to deny information to the licensing agency; rather it should be clear that a request by a licensing agency seeking information should be complied with.

BOLIM acknowledges and understands that, at this time, there are differing legal opinions of the potential implication of a shield law on states participating in licensing compacts. Given the potential legal implications have not yet been tested, BOLIM offers the following additional comments.

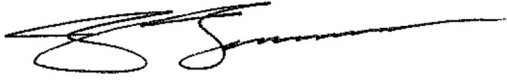
In Section 9002, the definition of “Hostile litigation,” together with very broad definitions regarding the services covered by the amendment, and the definition of “aggrieved person” give rise to an increased unintended litigation risk for the licensing agencies by licensees suing the licensing agencies. This provision will also directly conflict with requirements contained in licensure compacts. There are at least seven separate licensure compacts either already in effect or in process in Maine. Typical compact provisions include: cooperation with other states licensing agencies, including a requirement to issue or obtain subpoenas; sharing of information; automatic disciplinary provisions with no discretion [such as revocation in one state requires revocation of a license in another state issued by the compact]; and the ability of the entity created by the compact, usually a commission, to enforce the compact provisions [contract/statute/rules] including initiating litigation in federal court against a member state in default [see, e.g. 32 M.R.S. § 18518(2)] and seeking injunctive relief and damages, including costs and attorneys fees. To date to collective knowledge only one such lawsuit has ever been filed [and was quickly dismissed], but the risk is real.

Sections 9004, 9005 and 9006 may potentially impact health care licensing agencies by creating conflict with interstate licensure compacts with risk of enforcement and litigation as explained above.

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Thank you for the opportunity to provide these comments regarding LD 227. I would be happy to answer questions at the work session.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Terranova", with a long horizontal flourish extending to the right.

Timothy E. Terranova  
Executive Director