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Testimony Neither For Nor Against
LD 1722 An Act to Ensure Access to All Paths to Recovery for Persons Affected
By Opioids Using Money Obtained Through Litigation Against Opioid Manufacturers

Senator Claxton, Representative Meyer, and honorable members of the Joint Standing Committee on Health and Human Services, I am Aaron M. Frey, I reside in Bangor, and I am proud to serve as Maine's Attorney General. I am here to provide an update on the state of pending opioid litigation my office is involved with, and to offer some feedback on LD 1722.

The Office of the Attorney General (OAG) is litigating, investigating and/or negotiating with three groups of actors whom we believe bear responsibility for the opioid crisis, nationally and in Maine. These are the 1) manufacturers of opioids, 2) distributors of opioids, and 3) retail pharmacies (some of which also are distributors). Generally, we allege that these entities engaged in unfair and deceptive trade practices in connection with the promotion and sale of opioid drugs by overstating their benefits, understating the risks, oversupplying them, and failing to alert government entities to unusually large orders of the drugs.

The manufacturers we are engaged with include Purdue Pharma, Mallinckrodt, Endo, Teva, and Johnson & Johnson. The distributors we are engaged with are McKesson, Amerisource Bergen and Cardinal Health, and the retail pharmacies include CVS, RiteAid, and Walgreens.

In addition to the OAG action, many of Maine's subdivisions—cities, counties and school districts—have brought actions seeking to recover money from these same defendants. Cases have also been brought against some of these companies by individuals who have been personally harmed by opioids.

We sued Purdue and members of the Sackler family (the company's owners) in Kennebec County Superior Court. Purdue filed for bankruptcy which stayed our state court action. We have filed a proof of claim on behalf of the State in the bankruptcy proceeding and are currently negotiating a resolution with Purdue and the Sacklers. If we do not reach an acceptable settlement through the bankruptcy process, the court could impose a settlement on us. We could appeal that to a higher court, which has its pros and cons. We are currently negotiating the amount that the non-debtor Sacklers will pay to obtain releases as well as the time-period over which payments will be made.

Mallinckrodt has also filed for bankruptcy. Endo has not yet filed for bankruptcy and we have not made significant progress with our settlement negotiations. Endo is also facing claims

from other groups for its surgical mesh products, and possible antitrust violations. Teva negotiations are proceeding slowly.

J & J and the distributors may settle in the near future for amounts that are not public yet and which would be paid out over a significant period of time. These defendants want releases not only from the states, but also from all of the subdivisions in each state. The amount that we can obtain from these settlements is directly dependent on the number of Maine subdivisions that we can convince to sign on to the settlement. Subdivisions are seeking direct settlement payments from the defendants and settlement funds to pay their attorneys' fees as a condition of signing on.

If we can reach an agreement with the subdivisions on their portion of the settlement proceeds in the J & J and distributor matters, we could apply those terms to all settlements that we reach with opioid defendants, including, for example, Purdue.

We are investigating possible claims against pharmacies but have not yet engaged in settlement discussions. Pharmacies are vigorously defending all lawsuits filed against them to date.

LD 1722 will apply to the funds recovered by the Attorney General in these cases. From that total we will deduct amounts paid directly to the cities, counties, and, potentially, some of the school districts. The remainder would be deposited pursuant to the proposal in LD 1722. Many states are going forward with legislation similar to that proposed in LD 1722 to address the expenditure of funds for opioid abatement.

We would like to take this opportunity to suggest that Section 3 of the Bill at subsection 4 where the purposes of the fund are described be amended so that "recognized path" says instead "evidenced-based path." Finally, we recommend that the Abatement Advisory Commission be adequately funded, either through this bill or through some other mechanism. We are concerned that we will be receiving limited funds over a significant period of time, and it is critical to maximize the funds available for treatment and other abatement purposes.

Thank you very much.