

**TESTIMONY OF DENNIS E. SMITH, Executive Director  
Board of Licensure in Medicine and Designee of the Department of  
Professional and Financial Regulation**

**In opposition to LD 835**

**“An Act To Allow Citizens To Petition Government Agencies To Repeal or  
Modify Occupational Regulations”**

**Public Hearing: April 30, 2021**

Senator Baldacci, Representative Matlack, and Members of the Joint Standing Committee on State and Local Government, my name is Dennis E. Smith. I serve as the Executive Director of the Board of Licensure in Medicine (BOLIM) and today as the Designee of the Department of Professional and Financial Regulation (PFR). I speak in opposition to LD 835.

The BOLIM and PFR are well aware of the myriad State and federal laws, rules and regulations applicable to professional and occupational licensees as well as the burden that overregulation poses to these professions. As a result, the BOLIM and PFR intentionally avoid promulgating rules that would unnecessarily burden their licensees and not serve the purpose of protecting the public. For example, the BOLIM currently has only 8 separate rules that address the most vital aspects of its mission to protect the public – one of which was required to be promulgated by the Legislature:

1. A rule regarding physician licensure
2. A joint rule regarding physician assistant licensure
3. A rule for the issuance of non-disciplinary citations
4. A joint rule regarding collaborative drug therapy
5. A joint rule regarding telemedicine
6. A joint rule regarding sexual misconduct
7. A joint rule regarding office based opioid treatment
8. A joint rule regarding the use of controlled substances to treat pain

Each of the BOLIM rules was promulgated pursuant to the Maine Administrative Procedure Act (Maine APA), which imposes specific and significant requirements and processes on all State agencies that enact rules. For example, the Maine APA requires publication (public notice) of a proposed rule, the receipt of public comments regarding a proposed rule, agency response to public comments with an

explanation about why a comment was or was not accepted, and review of an adopted rule by the Attorney General's Office for form and legality. Throughout the rulemaking process BOLIM and PFR agencies are routinely assisted by an Assistant Attorney General.

The BOLIM and PFR believe that LD 835 would impose an unnecessary burden on their limited staff and resources for the following reasons:

1. The specific and rigorous legal requirements for State agencies to promulgate rules under the Maine APA *should create a presumption* that existing State agency rules are necessary, not unduly burdensome, and carefully tailored to fulfill legitimate public health, safety or welfare objectives. LD 835 would turn that presumption on its head – and require State agencies to re-justify the need for existing rules.

2. The BOLIM and PFR routinely review and update their rules to ensure that they comport with changes to laws and occupational and professional standards. Therefore, this bill is unnecessary.

3. Existing Maine law (Maine APA), 5 M.R.S. § 8052, already requires State agencies to consider the impact of a proposed rule and to issue a written basis statement and response to comments regarding any proposed rule. Specific paragraphs of the law state:

**4. Relevant information considered.** The agency shall consider all relevant information available to it, including, but not limited to, economic, environmental, fiscal and social impact analyses and statements and arguments filed, before adopting any rule.

**5. Written statement adopted.** At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments. The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

3. Existing Maine law (Maine APA), 5 M.R.S. § 8055, already permits an individual to petition a State agency to adopt or modify a rule and requires a State agency to initiate rulemaking *upon receipt of a petition submitted by 150 or more registered voters of the State*.

4. Existing Maine law (Maine APA), 5 M.R.S. § 8058, already allows an individual to challenge any State agency rule by filing an action in the Superior Court that alleges the rule exceeds the agency's authority, is arbitrary, capricious, an abuse of discretion or not in accordance with law.

5. Existing Maine law, 3 M.R.S. Chapter 35 ("State Government Evaluation Act" [GEA]), already provides for a system of periodic review of agencies of State Government. The BOLIM submitted a report pursuant to the GEA in November 2019, which is available at: <http://legislature.maine.gov/doc/3475>. PFR submitted a report pursuant to the GEA in November 2015, which is available at: [https://www.maine.gov/pfr/sites/maine.gov.pfr/files/inline-files/2015\\_GEA\\_%20Report.pdf](https://www.maine.gov/pfr/sites/maine.gov.pfr/files/inline-files/2015_GEA_%20Report.pdf).

Thank you for the opportunity to provide these comments regarding LD 835. I would be happy to answer any questions at the work session.