Testimony In Support of LD 1242, An Act To Ensure Appropriate Oversight of Maine's Medical Marijuana Program

My name is Alysia Melnick. I am attorney at Bernstein Shur, and I am here today on behalf of the Maine Craft Cannabis Association and as an appointed member of Maine's Marijuana Advisory Commission. Thank you for the opportunity to testify in support of **LD 1242, An Act To Ensure Appropriate Oversight of Maine's Medical Marijuana Program.**

I have worked alongside patients, caregivers and Maine lawmakers to develop and improve Maine's medical marijuana program for over a decade, fighting for access and privacy protections for patients and their caregivers, and to decriminalize and destigmatize cannabis in Maine. I thank you all for the extensive time you've put into this issue thus far this session and for your time and patience throughout today's hearings.

As you all know, Maine has permitted legal access to medical marijuana for over 20 years- reflecting an understanding that many Mainers with a wide variety of serious and chronic conditions benefit greatly from this plant - a plant which has no known lethal dose. Over the years, Maine has grown this program in ways that have ensured patient privacy and access and created a highly valuable statewide industry of small businesses that help patients address their condition in the way they and their provider believe is best, directly and indirectly employ thousands of people; and provide significant tax revenue as our state's most valuable agricultural commodity.

LD 1242 seeks to address the grave concerns about how the rules proposed by Maine's Office of Marijuana Policy would impact the predominantly small Maine businesses that make up Maine's medical marijuana industry. To be clear, we do not oppose the entirety of the rules —in fact, there are pieces that are common sense updates based on statute, or reasonable. But there are many others which seem to be policy decisions that go far beyond "routine or technical", threaten to undermine personal privacy and the right to associate, expose them to unwarranted police involvement, and will certainly increase the price of medicine and push people into the black market as caregivers pass on their costs or go out of business entirely.

Again – of major concern - the proposed changes were not presented alongside clear justification or demonstrated proportional benefit to public health or safety. For example, it is unclear why it is necessary to create rules mandating 24/7 video surveillance and 30 days of data storage, expensive alarms, obtrusive perimeter lighting, and extensive, additional packaging and labeling way beyond that required by statute. Compare to the wholesale drug distributors, which contain

requirements are less burdensome, less costly, less invasive despite the fact that these are potentially deadly substances with high diversion value.[1]

Additionally, the rules require participation in track and trace. But statute under MRSA §2430-G(1)(B) states: The department shall develop and implement a statewide electronic portal through which registered CG's…may submit to the department the records required." In addition to the subscription and labor costs of this program, under the proposed rules, if there are connectivity problems that prevent a caregiver from reconciling all transactions into the tracking system by 11:59pm each day, "[a] ny misstatements or omissions may be considered a registration violation affecting public safety" And this is despite the fact that they are caregivers are supported to keep comprehensive additional records during any loss of access…and despite the fact that under Title 5, agencies shall seek to reduce any economic burdens through flexible or simplified reporting requirements and may seek to reduce burdens through flexible or simplified timetables that take into account the resources available to the affected small businesses.

These new requirements are unnecessarily invasive, are not directed by statute and, again, certainly go beyond anything one would consider "routine technical". Some of these requirements go beyond what is even required for pharmacists and pharmacies that sell and dispense potently addictive, deadly medications like opioids.

Compare this to The Maine Pharmacy Act – which applies to people who sell and dispense potent and potentially deadly medications. Maine law includes a "presumption of good faith" with associated immunity from liability and allows them the flexibility to maintain a written log or an alternative electronic record-keeping mechanism until such time as the retailer is able to comply with the electronic logging requirement.

To provide another example, the proposed rules force caregivers to accept returns of medical cannabis for any/no reason without any proof the medication is problematic or proof that it has not been adulterated. This is not directed by statute and I am not aware of any other industry that would be required to follow such a directive – particularly without any evidence that there was a problem with the cannabis or any protection against the potential for the product to have been adulterated.

Again, compare to the Maine Pharmacy Act – under **Title 32 §13791. Return of drugs** - A drug or pharmaceutical preparation that has been dispensed on prescription may be returned to pharmacy stock after being in possession and under the control of another person and may be dispensed again if the drug is packaged in an unbroken, sealed container or if, in the case of a hospital, a licensed pharmacist determines that the drug has not been impaired.

[1] **3. Security** All facilities used for wholesale drug distribution shall be secure from unauthorized entry: A. Access from outside the premises shall be kept to a minimum and be well-controlled; B. The outside perimeter of the premises shall be well-lighted;

And some of these security requirements, such as the lighting, would interfere with routine cannabis cultivation practices – again reinforcing the fact that they were made without input of the farmers they impact.

We have yet to see information justifying some of the most costly and burdensome changes. Where is the record of noncompliance? Where is the data supporting invasive and costly 24/7 video monitoring, 10-ft perimeter lighting, factory installed car alarms and law enforcement access without cause? Where are the public health or safety risks that would warrant lengthy accordion style warnings that go beyond what is required even for alcohol or tobacco – two of the top three causes of preventable death in our country?

Again, if there is clear data to support these new proposed requirements - it would be very helpful if that information was made public. Without it, those impacted are left to wonder where these ideas came from and who they are designed to benefit. I urge you – as the committee of jurisdiction - to ask OMP to provide the fact sheet outlined in Title 5 section 8057-A which shall state the principal reasons for the rule; a comprehensive but concise description of the rule that accurately reflects the purpose and operation of the rule; an estimate of the fiscal impact of the rule; an analysis of the rule; and a brief summary of the relevant information considered during the development of the rule.

An appropriately regulated, safe, medical marijuana program supports Maine patients, their providers, and their communities —and there are places where clarification and changes are warranted. But we should not go backwards in terms of patient access or personal privacy to create unnecessary, costly and burdensome requirements, which have not been directed by statute, that will lead to shuttered businesses and an expanded black market.

Unfortunately, as you have heard, many of the changes proposed in these rules will harm the ability of small and medium sized caregivers to continue making a living providing high quality medication to patients throughout Maine. Not by any one piece – but cumulatively - a death by 1000 cuts. And this will have ripple effects, not only on public health, but on direct industry jobs, ancillary businesses and generated tax revenue.

There are, of course, improvements to be made, but they should be crafted with the assistance, insight and expertise of those most impacted. LD 1242 pushes pause and ensures that any proposed changes are guided by law and established with transparency and stakeholder input. We appreciate the time you are taking today to hear from patients and some of the thousands of industry participants and look forward to further discussion. I urge you to pass LD 1242.