

**WRITTEN TESTIMONY OF JANIS B. PETZEL, M.D., President, Maine Association of
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JUDICIARY COMMITTEE REVIEW

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Chairman Bliss, Chairman Priest, and members of the Joint Standing Committee on Judiciary: As President of the Maine Association of Psychiatric Physicians (MAPP), which represents psychiatrists in Maine, and as a practicing psychiatrist in Hallowell, I want to speak about concerns about possible changes to PL 2009, Chapter 230.

Given the explosion of communication devices that have been embraced by the adolescent age group, from Facebook to iphones to Twitter, and the level of immediacy and intimacy (and lack of parental awareness) that these media allow, and given that teens do not always recognize the risk of giving out personal information over these devices, MAPP feels that the state continues to have a compelling interest in the protection of all minors from data collection and direct marketing of pharmaceuticals or other health related-products.

Psychiatrists are physicians who study normal human cognitive development and behavior. We are particularly concerned about minor children being exposed to risks for which they are cognitively too immature to evaluate. The pharmaceutical industry, as it turns out, is also spending a great deal of time studying normal human brain function in its efforts to ever improve its marketing techniques. *Neuromarketing* is the rather chilling term that they use for this type of high tech applied research that raises a number of ethical considerations about the ability of advertisers to subvert free will and informed consent (*Wilson RM et al; Neuromarketing and Consumer Free Will. J of Consumer Affairs 42(3); 389-410*).

Physicians themselves have had to fight to maintain privacy of our own prescribing patterns because we have a difficult time fighting off the “drug rep” onslaught in our offices. If doctors feel the need to defend themselves against this type of targeted invasion of privacy, how much more important is it for society, through our elected officials, to protect children from predatory marketing?

And I don't use the term *predatory* lightly. As corporate entities, pharmaceutical companies have one major goal, and that is to make money for their shareholders. Not that there is anything wrong with making money, but when it comes at the expense of the general population's health, we have reason to be cautious when dealing with these companies. There have been ample cases in the news in the last few years about the un-trustworthy nature of information that is put out in advertisements. The U.S. Department of Justice case against Pfizer (2009) for marketing fraud is the most recent example.

Pharmaceutical companies recognize the power of advertising for creating a desire for their products, and they are good at skirting the letter of the law. For example, in 2007, the Food and Drug Administration had to send a letter to Takeda Pharmaceuticals, maker of the sleeping pill, Rozerem, telling them to cease and desist in their inappropriate “reminder ad” for Rozerem which ran in back-to-school ads in 2007. The ad visuals featured chalk boards, kids with backpacks, a school bus and voice over stating “Rozerem would like to remind you that it's back to school season...ask your doctor if Rozerem is right for you.” Not only do these ads medicalize a normal human condition that usually

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requires no intervention, but if repeated often enough, these ads create a sense in the viewer that the medication is safe for kids. The “reminder ads” did not require the usual listing of potential side effects, which in teens include “an association with an effect on reproductive hormones.” (*letter from Carrie Newcomer, PharmD, Consumer Promotion Analyst, FDA to Janet Lorenz, Takeda Pharmaceuticals, 3/5/2007*). Critics of the FDA noted that it took 6 months for the FDA to act. The ads had long stopped airing at that point, so the damage was done (www.consumersunion.org/pub/core_health_care/004316.html).

Back to human development: A child’s frontal lobes, the decision-making center of the cerebral cortex, do not fully mature until the child is in his/her early 20’s. That’s one of the reasons that college freshmen are required to stay in dorms: their decision-making brain centers are still maturing. In fact, there is some evidence that in the teen years, a person’s *executive function*, or ability to plan and predict consequences, actually diminishes. Until those frontal brain circuits fully mature, children and teens are extremely vulnerable to impulsivity, poor ability to assess risk, and to being influenced by peer pressure. You no doubt saw news reports about kids sending nude photos of themselves to peers over their cell phones. That should be evidence enough of how little teens understand the risk of the electronic media.

Ad agencies do understand. They cut their teeth on marketing to teens with promotion of cigarettes and alcohol, so there is much more data on the impact of these ads on teens. We know that when kids are exposed to alcohol or cigarette ads, their use of these substances increases, and kids who had never used start to use. (*Feighery et al, J Adolesc Health. Receptivity to alcohol marketing predicts initiation of alcohol use. 2008; 42(1):28-35; Lovato et al. Impact of tobacco advertising and promotion on increasing smoking behaviors. Cochrane Database syst Rev. 2003; (4):CD003439.*). Ad agencies are using similar techniques with promotion of pharmaceuticals. Teens cannot always recognize the marketing wolf in the e-sheep clothing that comes to them over their web-based media or their phones. Ubiquitous ads normalize certain behaviors and create the perception that “everyone” is doing it. Just as the alcohol and cigarette ads on TV used to target times when teens were likely to watch, e-ads and direct marketing target teen sites. And these days, there are so many of them, and adults understand the technology so little, that kids are out in uncharted waters on their own.

You may think that there are already layers of protection around pharmaceuticals for teens. The FDA at this point has no rule about direct marketing, so there is no protection for teens there. What about closer to home? A teen has to get his/her parents to take him/her to the doctor, and the doctor has to prescribe medications and go over the risks with the teen and parent. However, kids are remarkably adept at getting around this system. A survey of 594 U.S. adolescents found that 20% of these teens got medications from their peers without ever having gone through the protection of a doctor’s advice. The most commonly reported shared medication were allergy drugs, narcotic pain relievers, antibiotics, acne medications, antidepressants and anti-anxiety medications. (*Goldworthy and Mayhorn, Prescription Medication Sharing Among Adolescents: Prevalence, Risks and Outcomes. Journal of Adolescent Health doi:10.1016/j.jadohealth.2009.06.002*). These medications are far from benign. The acne medications are significant teratogens. The fetus of any girl who gets pregnant while using prescription acne medication is at high risk for serious birth defects. Anti-anxiety medications and opiate pain relievers are addicting and sedating; and improperly used antidepressants can lead to worsening mood symptoms. What is noteworthy is how many of these medications one sees in ads on television.

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Which leads to my second concern: I suspect that without the ads the kids wouldn't be asking for treatment, and they would be less interested in borrowing meds from their friends. Ads create dissatisfaction with one's own body image, something that teens are particularly sensitive to; or ads create the illusion of safety based on familiarity; or ads create desire by tantalizing teens with the promise of new experiences. Does it give any of you pause that Viagra is being advertised on websites frequented by adolescents? (*pharmaking.blogspot.com*)

Representative Treat has laid out clear history and background on how this legislation was enacted. MAPP is in complete agreement with Representative Treat's testimony and we will not repeat those arguments here.

We applaud the Maine Legislature's passage of law that protects the privacy interests of minors. The pharmaceutical and ad industry in the United States have recognized track records of targeted marketing that is not in a child or teen's best interest. It seems very possible to me to both continue to protect the interests of vulnerable children and teens and at the same time allow for freedom of speech.

Respectfully Submitted,

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Maine Association of Psychiatric Physicians