

State Board of Medical Examiners  
Open Public Session Minutes  
February 11, 2004

The meeting of the New Jersey State Board of Medical Examiners was held on February 11, 2004 at the Richard J. Hughes Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey. The meeting was called to order at 9:00 a.m. by David M. Wallace, M.D., President.

**PRESENT**

Board Members Chen, Criss, Haddad, Moussa, Paul, Patel, Perry, Robins, Rokosz, Trayner, Wallace, and Walsh:

**EXCUSED**

Board Members Desmond, Farrell, Harrer, Huston, Lucas, Ricketti, and Weiss.

**ALSO PRESENT**

Assistant Attorney General Joyce, Deputy Attorneys General Dick, Erhenkrantz, Flanzman, Gelber, Levine, Kenny, and Warhaftig, Executive Director Roeder and Medical Director Gluck.

**STATEMENT CONCERNING ANNUAL NOTICE OF PUBLIC MEETINGS**

The requirements of the "Open Public Meetings Act" have been satisfied by notice of this meeting given in the annual notice adopted by the New Jersey State Board of Medical Examiners on October 8, 2003 which was transmitted to the *ATLANTIC CITY PRESS*, *STAR LEDGER*, *CAMDEN COURIER POST*, *ASBURY PARK PRESS*, *BERGEN RECORD* and the *TRENTON TIMES*, all on the 11th day of November 2003.

**ANNOUNCEMENTS**

The New Jersey State Board of Medical Examiners (the Board) will hold an informal conference for the purpose of permitting interested persons to present their views regarding the feasibility of decreasing medical malpractice insurance rates in the State. The meeting will take place:

**February 19, 2004**  
**Ramada Inn East Brunswick**  
**195 Route 18 South**  
**East Brunswick, NJ 08816**  
**10:00 to 5:00**

Requests to speak should be submitted in writing to William Roeder, Executive Director, State Board of Medical Examiners, PO Box 183, Trenton, NJ 08625, no later than one week prior to the scheduled conference date. Specific presentation times will be assigned. Individual presentations will be limited to 10 minutes. (Those who do not pre-register to speak will be given an opportunity to speak only if the schedule allows.) Written comments and testimony are also encouraged and should be forwarded to the Board office (P.O. Box 183, Trenton, NJ 08625) by February 19, 2004.

**MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JANUARY 14, 2004 OPEN BOARD MINUTES AS SUBMITTED WITH THE CORRECTION THAT D.A.G. GELBER WAS PRESENT.**

**MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JANUARY 12, 2004 OPEN CREDENTIAL COMMITTEE MINUTES. Drs. Rokosz and Wallace recused from discussion and vote in the St. George matter.**

## **OLD BUSINESS**

### **1. PROPOSED ELECTROLOGISTS REGULATION**

On July 21, 2003, proposed regulation for the electrologists advisory committee was published. Attached for the Board's consideration were draft responses to the comments received and a request for authorization to publish them in the New Jersey Register as a proposed adoption.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE RESPONSES TO COMMENTS AND TO PUBLISH THEM IN THE NEW JERSEY REGISTER AS AN ADOPTED REGULATION.

## **NEW BUSINESS**

### **2. LEGISLATION**

#### **Assembly Bill No. 1513**

Attached for the Board's review was Assembly Bill No. 1513 which was prefiled for introduction in the 2004 Session on January 13, 2004. The bill deals with various issues relating to medical malpractice liability of health care providers and seeks to revise various parts of statutory law. Of particular interest to the Board, the bill contains provisions which would require that every affidavit of a physician and court transcript concerning expert testimony of a physician in regard to a medical malpractice action be delivered to the Board of Medical Examiners for review of the accuracy and consistency with other testimony given or affidavits executed in the past. If the Board determines, after a hearing, that the testimony of affidavit does not conform with appropriate standard of practice or care, the physician SHALL have his/her license registration revoked.

The Board, in general, expressed favor with the intent of this Bill. The Board, however, was concerned that it currently does not have the appropriate resources or personnel to support the Panel as suggested by this proposal. As it related to the medical malpractice issue, the Board noted that it would be holding an informal conference on this very issue and as in prior comments to similar legislation, believed that this issue should not be dealt with as "piecemeal" initiatives. The Board also expressed concern as to limiting the statute of limitations to a minor's sixth birthday since it is often the case, especially relating to neurological problems, that the "injury" may not surface until after a child's sixth birthday. The Board opposed the provision which mandated the immediate revocation if the Board determined that the affidavit/testimony did not conform to the standard of care, but believed that the ultimate action should be left to the discretion of the Board on a case by case basis. The Board suggested that some compensation be provided to the Panel as it has been the Board's experience that it is difficult to recruit outside consultations in its absence.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUPPORT THE BILL IN GENERAL WITH THE COMMENTS ARTICULATED BY THE BOARD AND RECORDED ABOVE.

#### **Assembly Bill No. 1913**

Attached for the Board's consideration was a bill, which was introduced and referred to the Assembly Health and Human Services Committee on January 22, 2004. It was reported out of Committee on the same day with Amendments with a second reading in the Assembly.

The Board voted to oppose the legislation, except it did not object to increasing the number of public members to the Board or the requirement to report to the legislators on an annual basis.

The Board noted that recently, there was an intense activity performed by the Board, the Division of Consumer Affairs, the Division of Law and the Administrative Office to perform a self-critical analysis of the Board's operations. As a result, recommendations have been made to the Attorney General in which turnaround time, better consumer service, increased and streamlined processes would result as it relates to the Board's activities. If

implemented, there is no need for the creation of a committee to further study the Board's operations, and consequently, no reason to move the Board from the Division of Consumer Affairs, Law and Public Safety. It was noted that the makeup of the proposed Committee within the Bill does not include any representatives from any of the to-be-studied Boards or the Division. This excludes a tremendous amount of experience and expertise. Additionally, the Board believed that if the Commission were to be formed, it must also include representatives from other health care providers, such as CNMs, PAs, Nurse Association. Also, the Commission seems to include a number of societies that have the interest of the licensee at heart, however, there is no corresponding consumer advocate/representative on the Commission. As it relates to the Board of Medical Examiners (the "BME"), any potential transfer to another agency would be fruitless without the concurrent transfer of the skilled staff (to include both Administrative Office and Division of Law). Without the necessary expertise and long needed additional staffing, any transfer to any agency would not effectuate any improvements. Additionally, without an increase in the resources available to the Board, improvements would not occur regardless of the agency under which the BME would be placed. The Board also opposed the suggestion that cases be transferred to the Office of Administrative Law. This is contrary, and defies logic, as to who should be hearing the cases and who has the necessary expertise to evaluate complicated medical matters. The Board members have this expertise to properly evaluate any claim. The Board did not deny that the OAL has the ability to gather/test the facts of a case and to make credibility determinations, but it does lack the expertise essential to evaluating the issues brought forth as violations of the Medical Practice Act. There was also some questions as to the provision that upon receipt of information from a hospital in which a privilege action has been taken or receipt of malpractice payment reports, that the Panel was to deal with the information within thirty days. It is unclear if the thirty days refers to the initiation of an investigation or that the Panel was required to complete the investigation within thirty days. If the Panel is to complete the investigation within thirty days, this time frame is insufficient to gather the necessary information and provide the licensee with the appropriate due process rights. The proponent of the legislation should be made aware that within thirty days of the receipt of this information, additional information is requested and the matter is initially reviewed by the Panel to develop the strategies of the investigation. This issue was also addressed by the self critical analysis recently performed by the Board. It was the recommendation of the Committee to require the reporters to submit additional information with the initial report. For example, a meeting has already been held with medical malpractice insurance carriers and it has been suggested that the expert reports, along with patient records, be provided to the Panel with the initial report. A form is being developed, and has been discussed with the carriers, that will provide more meaningful information at the onset to the Panel members. With this information in hand and up front, the Panel would be able to better streamline its investigation and review, thereby, accelerating the review process. The Board also believed that limiting the terms of those that could serve on the Board was ill advised. This would eliminate expertise that can only be developed after serving on the Board for a longer period of time.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE COMMENTS AS WRITTEN ABOVE AS ITS RESPONSE TO THIS PROPOSED LEGISLATION. Dr. Paul abstained from vote in this matter.

### **3. Macedo v. Joseph Dello Russo**

Attached was the Court's opinion in the above-referenced matter. The Board accepted this as informational.

### **INFORMATIONAL**

Alma Saravia, representing the CRNAs, renewed her request for a stay of the supervisory requirements relating to CRNAs for provision of anesthesia for the in-office setting. She reminded the Board that currently the stay put in place would expire on February 16, 2004. She asserted that if the Board were not to extend the stay CRNAs would be without employment.

### **PUBLIC COMMENT**

Respectfully submitted,

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David M. Wallace, M.D.  
President

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