

OPEN BOARD MINUTES

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

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A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 12, 2014, at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey. The meeting was called to order by President George J. Scott, D.P.M., D.O., FACOFP

PRESENT

Board Members Ciechanowski, DeGregorio, Jordan, Krauss, Maffei, Miksad, Paul, Rajput, Rock, Scott, Stanley, Tedeschi and Walsh.

EXCUSED

Board Members Berkowitz, Cheema, Criss, Lomazow, Mendelowitz, and Weiss.

ALSO PRESENT

Assistant Attorney General Sharon Joyce; Senior Deputy Attorneys General Dick, and Flanzman; Deputy Attorneys General Goulding, Hafner, Levine, Merchant and Puteska; William V. Roeder, Executive Director of the Medical Board and Harry Lessig, M.D., Consultant Medical Director.

STATEMENT CONCERNING THE ANNUAL NOTICE OF PUBLIC MEETINGS

The requirements of the "Open Public Meetings Act" were satisfied by notice of this meeting given in the annual notice adopted by the New

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Jersey State Board of Medical Examiners on August 14, 2013 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 24th day of September 2013.

ANNOUNCEMENTS

Dr. Scott reminded the Board that last month the Board received a request from Senator Codey seeking a review the BME regulations as they relate to the concept of GainSharing. The Executive Committee had the opportunity to review the request and given the implications of the review and the far reaching stakeholders, it recommended forming a subcommittee to gather additional information and study. He appointed Drs. Rajput, Rock, Tedeschi and himself to serve on the subcommittee.

THE BOARD ACCEPTED THIS AS INFORMATIONAL.

MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED VOTED TO APPROVE THE FEBRUARY 12, 2014 OPEN BOARD MINUTES.

The motion was made by Dr. Jordan and seconded by Mr. Walsh. It carried unanimously.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE OPEN PHYSICIAN ASSISTANT ADVISORY COMMITTEE MINUTES FROM JANUARY 17, 2014.

The Motion was made by Dr. Jordan and seconded by Mr. Walsh and carried unanimously.

NEW BUSINESS

S90

Seeks to require that the Commissioner of Department of Health to convene a strategic planning summit to analyze the State's physician workforce supply.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUPPORT THE PROPOSED

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LEGISLATION.

The Motion, made by Dr. Jordan and seconded by Dr. Rock, carried unanimously, with a recusal by Dr. Paul from both discussion and vote.

S 614

Seeks to reduce the statute of limitations for medical malpractice liability actions to four years.

WHILE THE BOARD SUPPORTS EFFORTS AT TORT REFORM GENERALLY, IT HAD SIGNIFICANT CONCERNS ABOUT S614 AS PRESENTLY DRAFTED.

IT APPEARS, FROM REVIEW OF THE LEGISLATIVE "STATEMENT," THAT THE INTENT OF S614 IS TO MODIFY THE "DISCOVERY RULE" TO PRECLUDE, IN ALL INSTANCES, COMMENCEMENT OF ANY PROFESSIONAL LIABILITY ACTION AGAINST A PHYSICIAN (OR OTHER HEALTH CARE PROFESSIONAL) MORE THAN FOUR YEARS FROM THE DATE OF THE ALLEGED MALPRACTICE. THE BOARD EXPRESSED CONCERN THAT SUCH A RULE COULD HARM THE PUBLIC, BY FORECLOSING

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INDIVIDUALS FROM PURSUING LEGITIMATE CASES WHERE ANY MALPRACTICE COULD NOT REASONABLY BE DISCOVERED WITHIN FOUR YEARS OF THE DATE ON WHICH IT OCCURRED.

AS SIGNIFICANTLY, THE BOARD EXPRESSED CONCERN THAT S614, AS PRESENTLY DRAFTED (WITH PARTICULAR FOCUS ON THE USE OF THE PHRASE "IN ANY CASE" PRECEDING THE REQUIREMENT THAT AN ACTION BE COMMENCED WITHIN 4 YEARS FROM THE DATE ON WHICH MALPRACTICE IS ALLEGED TO HAVE OCCURRED) MAY BE INTERPRETED TO EXTEND THE STATUTE OF LIMITATIONS FOR MALPRACTICE ACTIONS FROM 2 TO 4 YEARS FOR ALL CASES, INCLUDING ALL ACTIONS WHERE ANY MALPRACTICE IS APPARENT ON OR ABOUT THE DATE ON WHICH IT OCCURS. IF THAT INTERPRETATION IS ACCURATE, THEN THIS LEGISLATION WILL LIKELY EXACERBATE THE "MEDICAL MALPRACTICE INSURANCE CRISIS," BY DOUBLING (IN MOST CASES) THE PRESENT STATUTE OF LIMITATIONS FOR COMMENCING CIVIL ACTIONS. THE BOARD EXPRESSLY OPPOSES ANY PROPOSAL TO LENGTHEN THE PRESENT STATUTE OF

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**LIMITATIONS FOR MEDICAL MALPRACTICE CASES.
THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO MAKE THE ABOVE
COMMENTS.**

The Motion was made by Dr. Maffei and seconded by Dr. Paul. It carried unanimously.

S681

Seeks to provide for issuance of a certificate of rehabilitation to certain offenders with substance abuse disorders.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO COMMENT THAT THE
ILLNESS OF ADDICTION IS ON GOING DISEASE AND
AT BEST ONE MIGHT BE IN REMISSION AND
BELIEVES THAT EACH CASE NEEDS TO BE
TREATED ON CASE BY CASE ON THE BASIS ON THE
INDIVIDUAL PATHWAY OF RECOVERY. THE
BOARD SUPPORTS THE LEGISLATION AS LONG AS
THERE REMAINS THE DISCRETION TO THE BOARD
ACCORDING TO THE CIRCUMSTANCES OF THE
CASE UNDER REVIEW. IT FURTHER NOTED THAT**

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THE BOARD HAS IN PLACE A PROGRAM WHICH ASSISTS ITS LICENSEES WHICH HAS HAD A RELATIVELY GOOD SUCCESS RATE. THE BOARD ALSO QUESTIONED THE PURPOSE OF THE STATUTE INASMUCH AS THERE IS A REHABILITATIVE STATUE ALREADY IN PLACE.

The Motion was made by Dr. Jordan, seconded by Dr. Rajput. It carried unanimously.

S682

Seeks to establish a process to bar certain healthcare providers from receiving reimbursements under PIP.

Ms. DeGregorio, Ms. Miksad and Dr. Paul recused and did not participate in the discussion or vote in the matter.

THE BOARD, UPON MOTION MADE AND SECONDED VOTED TO COMMENT THAT IT IS ALWAYS SUPPORTIVE OF ATTEMPTS TO LIMIT FRAUD, MISREPRESENTATIONS AND INSTANCES OF PROFESSIONAL MISCONDUCT WHEN OVER

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UTILIZATION OF TESTING OCCURS. IT ALSO NOTED THAT IT WAS RELUCTANT TO LEND SUPPORT TO THIS PROPOSAL WITHOUT AN UNDERSTANDING OF THE MECHANICS AND PARAMETERS OF THE PROPOSED PROCESS.

The Motion, made by Dr. Scott and seconded by Dr. Jordan carried unanimously.

S870

Seeks to eliminate the requirement of joint protocol with physicians for advanced practice nurses to prescribe medication.

WHEN THE EXECUTIVE COMMITTEE REVIEWED A PRIOR BILL SEEKING TO DELETE THE PROVISIONS THAT REQUIRE AN APN TO MAINTAIN A JOINT PROTOCOL WITH A COLLABORATING PHYSICIAN CONCERNING THE PRESCRIPTIVE PRACTICES OF THE APN, THE EXECUTIVE COMMITTEE MET WITH ASSEMBLY WOMAN MUNOZ, THE THEN PROPONENT OF THE BILL BACK IN JANUARY 2013. ACCORDING TO ASSEMBLYWOMAN MUNOZ, SHE

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DID NOT BELIEVE THAT THE PROPOSAL CHANGED THE CURRENT SCOPE OF PRACTICE INASMUCH AS THERE IS NOT SUPERVISION BY THE PHYSICIAN OVER THE APN'S PRACTICE. SHE CONTENDED THAT THE REMOVAL WOULD PROVIDE BETTER ACCESS TO CARE FOR PATIENTS AND SHE HOPED THIS WOULD INCREASE THE ABILITY OF PATIENTS TO BE SEEN IN PARTICULAR IN THE FAMILY PRACTICE SETTING. SHE CITED SEVERAL CHALLENGES THAT THE JOINT PROTOCOLS PRESENT.

- 1. THE PHYSICIAN'S NAME ON THE PRESCRIPTION SOMETIMES MEANS THAT TEST RESULTS OR PHARMACY INQUIRIES ARE SENT TO HE PHYSICIAN AND NOT THE APN WHO WROTE THE PRESCRIPTION OR ORDER, THEREBY DELAYING CARE FOR THE PATIENT.**

- 2. WHEN THE COLLABORATION IS ENDED FOR WHATEVER REASON, THE APN OFTEN**

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**HAS TROUBLE FINDING ANOTHER
COLLABORATING PHYSICIAN AND
ESSENTIALLY CANNOT PRACTICE OR
CONTINUE WITH ON GOING PATIENT
CARE UNTIL A NEW PHYSICIAN IS FOUND.**

- 3. SOME PHYSICIANS ARE CHARGING LARGE
SUMS OF MONEY TO SIGN THE
PROTOCOLS.**

**SHE ASSURED THE EXECUTIVE COMMITTEE THAT
APNS WERE NOT ATTEMPTING TO PRACTICE
MEDICINE, BUT PRACTICING WITHIN THEIR SCOPE
AS TRAINED AND EDUCATED APNS. SHE
INFORMED US THAT 18 STATES, AND THE
DISTRICT OF COLUMBIA, AT THAT TIME DID NOT
REQUIRE THE JOINT PROTOCOLS.**

**AFTER MEETING WITH THE ASSEMBLYWOMAN,
THE EXECUTIVE COMMITTEE WAS NOT OPPOSED
TO THE REMOVAL OF THE REQUIREMENT, AS IT
MAY HAVE BECOME AN OBSOLETE REQUIREMENT.**

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THE COMMITTEE, HOWEVER, WAS NOT COMFORTABLE WITH THE PROVISION WHICH WOULD ALLOW AN APN'S SIGNATURE TO SATISFY ANY OF THE STATUTORY REQUIREMENTS FOR A PHYSICIAN'S SIGNATURE. IT OPPOSED THIS PROVISION IN ITS ENTIRETY. THE COMMITTEE ALSO RAISED A NUMBER OF CONCERNS RELATING TO THE LACK OF MALPRACTICE REQUIREMENTS, LIMITATIONS AS TO CERTAIN PRACTICE AREAS BASED ON EDUCATION, RELATIONSHIP OF THE APN TO THE GENERAL BUSINESS CORPORATION RULES, OR KICKBACK RULES. WITH THESE CONCERNS IN MIND, THE COMMITTEE WAS NOT SUPPORTIVE OF THE BILL AS WRITTEN.

OVERALL, THE COMMITTEE BELIEVED THAT THERE SHOULD BE SOME RELATIONSHIP BETWEEN A PHYSICIAN AND AN APN SO HAS NOT TO CREATE AN INCREASED RISK OF PATIENT HARM. THE COMMITTEE BELIEVED THAT THE BOARD COULD SUPPORT REMOVING THE JOINT PROTOCOL REQUIREMENTS, BUT BELIEVED THAT SUPPORTING

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THE BILL AS CURRENTLY WRITTEN COULD ENDANGER PATIENT SAFETY. THE COMMITTEE SUGGESTED THAT THE BOARD WORK WITH THE DIVISION OF CONSUMER AFFAIRS AND OTHER STAKEHOLDERS IN DRAFTING LANGUAGE THAT MIGHT ADDRESS THE BOARD'S CONCERNS, WHILE AT THE SAME TIME ACCOMPLISH SOME OF THE GOALS OF THE PROPOSED LEGISLATION.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REFER THE MATTER TO THE DIVISION OF CONSUMER AFFAIRS SEEKING ITS GUIDANCE AND ASSISTANCE IN HAVING ALL THE STAKEHOLDERS WORK WITH ONE ANOTHER OF THESE ISSUES.

The Motion, made by Dr. Jordan and seconded by Dr. Tedeschi carried eleven voting in favor and Dr. Krauss voting in opposition.

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S876

Seeks to require hospitals and health care professional to offer hepatitis C testing to certain individuals.

In general, the Board was supportive of the bill in concept, but questioned the process and whether or not the offer should be broader than the limitations imposed by the legislation. It reserved comment on the bill and referred the proposed bill to the Executive Committee for further review and comment.

OLD BUSINESS

Nothing Scheduled.

INFORMATIONAL

Nothing provided.

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PUBLIC COMMENT

Dr. Ackerman addressed the Board about what she believed was a motion for reinstatement of her license. DAG Hafner noted that there was no motion pending at this time and that the Board had already dealt with this issue.

Respectfully submitted,

George J. Scott, D.P.M., D.O., FACOFP
Board President

WVR/br