

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, April 9, 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 Angrist, Berkowitz, Berkowitz, Cheema, Criss, DeLuca, Krauss, Kubiel, Lopez, Maffei, Metzger, Miksad, Parikh, Rock and Scott.

EXCUSED

Board Members DeGregorio, McGrath, Rao and Shah.

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorneys General Dick, Flanzman and Gelber, Deputy Attorneys General Hafner, Levine, Puteska and Warhaftig, William V. Roeder, Executive Director of the Medical Board, Sindy Paul, M.D., Medical Director 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.

INTRODUCTION AND SWEARING IN OF NEW BOARD MEMBERS

The newly appointed Board members each gave a short introduction of their background, after which the Oath of Office was administered.

ANNOUNCEMENTS

Dr. Scott welcomed each of the newly appointed Board members and thanked those members who previously served on the Board.

Dr. Scott also appointed Ms. Criss to fill the vacancy of Treasurer.

Dr. Scott also welcomed Dr. Sindy Paul as the new Medical Director of the Board. He thanked her for her many years of service as a Board member and was confident that she would continue to serve the Board well in her new position.

MINUTES **THE BOARD, UPON MOTION MADE
AND SECONDED, VOTED TO APPROVE**

**THE MARCH 12, 2014 OPEN BOARD
MINUTES.**

The Motion, made by Ms. Criss and seconded by
Dr. Berkowitz, carried unanimously.

NEW BUSINESS

LEGISLATION

A260 - Seeks to require that medical bills be standardized and accompanied by explanatory disclosure form.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO SUPPORT THE CONCEPTS
ESPOUSED BY THE PROPOSAL AS IT BELIEVED FULL
DISCLOSURE AND STANDARDIZED INFORMATION
IS GENERALLY IN THE BEST INTERESTS OF THE
PATIENT-CONSUMER. IT RECOMMENDED NOT
SUPPORTING THE BILL AS WRITTEN BECAUSE IT
BELIEVED THAT THE SCOPE AND DEMANDS
REQUIRED OF THE LICENSEES WAS UNDULY
BURDENSOME AND ONEROUS. MORE OFTEN THAN
NOT, REIMBURSEMENT FORMS AND ISSUES ARE**

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GOVERNED BY THIRD PARTY PAYORS OUTSIDE THE PURVIEW OR CONTROL OF THE PHYSICIAN. ADDITIONALLY, THE THIRD PARTY PAYORS ARE NOT EVEN CONSISTENT WITH WHAT THEY REQUIRE UNDER ANY VARIETY OF THE PLANS OFFERED BY THAT PAYOR. IT WAS ALSO NOTED THAT THE EXPLANATION AS TO WHAT PROCEDURES AND WHY THEY ARE BEING PERFORMED/PROVIDED IS PROVIDED IN THE CONSENT FORM.

The Motion, made by Ms. Criss and seconded by Dr. Berkowitz, carried unanimously.

A601 - Seeks to establish the “Medical Philanthropy Act,” which will provide physicians who provide uncompensated care with a \$250,000 cap on non economic damages in actions alleging medical malpractice.

A606 - Seeks to require civil immunity to licensed health care professional who provide care at health care facilities for no compensation.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUPPORT THESE BILLS TO THE EXTENT THAT THEY ARE A FIRST STEP IN MOVING FORWARD IN SOME FORM OF TORT

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REFORM AND THAT AS LONG AS THE ISSUE REMAINS DORMANT, POTENTIAL HARM EXISTS TO BOTH THE PHYSICIAN AND PATIENT COMMUNITIES. ALTHOUGH THE BOARD HAS TRADITIONALLY PREFERRED THAT TORT REFORM BE ACCOMPLISHED AS AN OVERALL INITIATIVE RATHER THAN IN A PIECEMEAL FASHION, IT DOES NOT APPEAR THAT THOSE ATTEMPTS HAVE BEEN SUCCESSFUL. TO THE EXTENT THAT THESE PROPOSALS CONTINUE TO KEEP THE DISCUSSION ALIVE, THE BOARD SHOULD SUPPORT THE EFFORTS. THE BOARD IS SUPPORTIVE TO THE EXTENT THAT NON ECONOMIC DAMAGES ARE SOUGHT TO BE CAPPED UNDER THESE PROPOSALS. THE CAPS, HOWEVER, SHOULD NOT BE TIED TO THE TYPE OF CARE PROVIDED AND SHOULD APPLY EQUALLY FOR ALL CLAIMS FOR NON ECONOMIC DAMAGES. ADDITIONALLY, THE BOARD IS NOT SUPPORTIVE OF ANY EFFORTS AT THE EXPENSE OF THE UNDER-DESERVED OR UNINSURED AND TO THE EXTENT THESE BILLS IMPEDE A LEGITIMATE CLAIM BY A PATIENT TO HAVE RECOURSE FOR DAMAGES CAUSED, THE BOARD SHOULD NOT SUPPORT THEM.

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The Motion was made by Dr. Cheema and seconded by Dr. Berkowitz. It carried unanimously.

A1045 - Seeks to require practitioners to disclose business relationships with out-of-state facilities when making patient referrals to those facilities.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED NOT TO SUPPORT THIS BILL. WHILE IT FULLY SUPPORTS FULLY INFORMING PATIENTS ABOUT THEIR FINANCIAL AND/OR OWNERSHIP INTERESTS, THE OTHER REQUIREMENTS OF THE PROPOSAL ARE UNDULY BURDENSOME AND MAY NOT EVEN BE ATTAINABLE. MOST PHYSICIANS, IF ANY, WILL NOT HAVE THE INFORMATION REQUIRED UNDER THIS PROPOSAL AND IT WILL BE ALMOST IMPOSSIBLE TO OBTAIN IT AND REMAIN CURRENT. MANDATING THIS RESPONSIBILITY ON THE PHYSICIAN MAY ACTUALLY DO MORE HARM TO THE PATIENT AS A LICENSEE MAY LIMIT AND/OR DISCOURAGE REFERRALS THAT ARE IN THE BEST INTEREST OF THE PATIENT BECAUSE OF THE ONEROUS BURDENS PLACED ON THE PHYSICIAN.

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A LICENSEE CAN EASILY INFORM A PATIENT OF A FINANCIAL OR OWNERSHIP INTEREST, WHICH THE BOARD BELIEVES IS LEGITIMATE INFORMATION THAT SHOULD BE EXPLAINED AND DISCLOSED. THE BOARD ALWAYS SUPPORTS OPEN COMMUNICATION AND DISCLOSURE TO THE PATIENT, AND INDEED, IT IS ALREADY REQUIRED THAT A LICENSEE MUST DISCLOSE FINANCIAL INTERESTS AND THIS SUFFICIENTLY PROTECTS THE PATIENT. THERE IS NOT ANY ADDED LAYER OF PROTECTION AFFORDED TO THE PATIENT IF THIS LEGISLATION WERE TO PASS AND THE BURDENS IMPOSED ON THE PHYSICIAN COMMUNITY FAR OUTWEIGH ANY CONTEMPLATED BENEFIT TO THE PUBLIC.

The Motion was made by Dr. Cheema and seconded by Ms. Criss. It carried unanimously.

AI254 - Seeks to require that certain civil actions against certain licensed persons be brought within two years.

UPON A MOTION MADE AND SECONDED, THE BOARD VOTED TO SUPPORT THIS PROPOSAL AS LONG AS THE OVERALL OBJECTIVE IS NOT TO DO

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AWAY WITH THE DISCOVERY RULE.

The Motion was made by Ms. Miksad and seconded by Ms. Criss.
It carried unanimously.

A1436 - Seeks to establish a Statewide Opioid Law Enforcement Coordinating Task Force.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO SUPPORT THIS
LEGISLATION.**

The Motion, made by Dr. Cheema and seconded by Ms. Criss,
carried unanimously.

A2332 - Seeks to require that a public agency publish notice of public meetings on an official Internet website at least forty-eight hours prior to the meeting.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED IN SUPPORT OF THE
PROPOSED BILL AND NOTED THAT FOR ALL
INTENTS AND PURPOSES THE BOARD OF MEDICAL
EXAMINERS, THROUGH THE DIVISION OF
CONSUMER AFFAIRS, ALREADY MEETS THESE
REQUIREMENTS.**

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The motion was made by Dr. Rock and seconded by Ms. Criss. It carried unanimously.

A2392 - Seeks to establish “The Patient Safety and Provider Incentive Program” and makes an appropriation.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUPPORT EFFORTS THAT ATTEMPT TO REDUCE THE COST OF HEALTH CARE, BUT DID NOT BELIEVE THAT THE GOALS OF THIS LEGISLATION WERE ACHIEVABLE. AT THE OUTSET, IT NOTED THAT THERE WAS AN APPROPRIATION UNDER THE PROPOSAL, HOWEVER, THE BOARD DID NOT BELIEVE THAT IT HAD THE EXPERTISE TO ACCURATELY APPORTION THE FUND OR DEVELOP THE APPROPRIATE FORMULA BY WHICH IT WOULD BE APPORTIONED. THE BOARD ALSO DOES NOT HAVE THE EXPERTISE TO ESTABLISH THE CRITERIA OR METHODOLOGY TO REDUCE THE COSTS. IN PARTICULAR, IT WAS QUESTIONED HOW IT WAS EVEN POSSIBLE TO ESTABLISH PROTOCOLS WHICH WOULD REDUCE PATIENT HARM. THE FUNCTIONS WHICH THIS BILL SEEKS TO

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ESTABLISH ARE NOT TYPICAL OF BOARD FUNCTIONS AND GIVEN THE MYRIAD OF FUNCTIONS ALREADY UNDER ITS PURVIEW, AND IT WOULD BE STRETCHING THE CAPACITY OF THE BME TO PERFORM WHAT WOULD BE REQUIRED UNDER THIS PROPOSED LAW. ADDITIONALLY, THE BOARD DID NOT BELIEVE IT WAS IN THE BEST INTEREST OF THE CITIZENS OF NEW JERSEY TO PROVIDE THE NO- FAULT COMPENSATION CONTEMPLATED BY THE LEGISLATION.

The Motion, which carried unanimously, was made by Ms. Miksad and seconded by Dr. Maffei.

S1171 - Seeks to establish certain requirements, including allowable fees, for provision of medical records to patients, legally authorized representatives and authorized third parties.

The Board questioned the need to codify the proposed amended requirements in statutory form because this would not permit the same flexibility as does the regulatory process. The board's regulations are very detailed and already address issues or concerns which this piece of legislation would seek to address. Codification may not be in the best interest of patients as the flexibility of the regulatory process permits the board to adjust its

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regulatory scheme in a more timely manner as the practice of medicine evolves. The Board is generally supportive of the provisions which seek to alter the current fees that can be charged and under what circumstances. The Board was also supportive of the concept that patients who cannot afford to pay should be given some consideration. However, the way in which this proposal contemplates that accommodation appears to be difficult, if not impossible, to apply. As currently proposed, it may actually discourage physicians from providing services in lower income areas because of the difficulties imposed by determining who might qualify for a no-pay provision of records.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REFER THE MATTER TO THE EXECUTIVE COMMITTEE TO CONSIDER AMENDING ITS CURRENT REGULATION CONSISTENT WITH SOME OF THE PARAMETERS CONTAINED WITHIN THIS PROPOSAL.

The Motion, made by Dr. Berkowitz and seconded by Dr. Cheema, carried unanimously.

SI184 - Revises requirements for licensure and creates physician-delegated scope of practice for physician assistants.

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The Board has always valued the contributions of Physician Assistants and has supported the profession and its assistants in promoting quality, cost effective, and accessible health care. As the Board continues to face many of the challenges of the current healthcare reform, it recognized that efforts to reduce costs by eliminating duplicative services, improve quality and efficiency of the delivery of care, as well as demand a new focus on increasing primary care providers, the role of the Physician Assistants will continue to play a pivotal and valuable component of health care delivery. The uncontrolled rise in the cost of health care has made it essential to institute cost-saving measures. Physician Assistants have freed physicians from routine responsibilities, allowing the physician to treat patients whose complex medical conditions require their expertise. Physicians have a depth and breadth of training that is unmatched by any other health care professional and the Physician Assistant model has always recognized and embraced the notion that physicians should lead the health care team. The synergy of Physician-Physician Assistant team practice benefits patients both individually and collectively. It is against that backdrop, that the Board did not support the proposed expansion of the Physician Assistant's scope of practice as contemplated in this proposed legislation. The Board believed that the proposed scope of practice expansions is well beyond the education and training and essentially creates an independent practitioner, without any benefit of any residency training. Such

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an expansion is contrary to the fundamental foundations of the profession and contrary to the mandates of that profession. The bill explicitly states that the Physician Assistant will be engaged in the “practice of medicine” and removes any supervision by a physician, yet places the burden on the physician for the liability and/or legal responsibility for the care rendered by the Physician Assistant. The Board perceived that this requirement would negatively impact the practice as physicians will no longer wish to associate themselves with these ancillary health care providers. The Board also believes that this would also negatively impact the profession, inasmuch as the Physician Assistant may practice outside the scope of the physician who would be assuming the liability, thereby limiting the pool of physicians willing to associate with them. Moreover, this creates more of a “specialty” practice which is contrary to the general, primary care education and training currently taught and received by the recognized educational programs. The limitations currently in place continue to remain relevant and should not be delineated. The Physician Assistant practice should retain the current supervision requirements currently in place and such broad expansion should not be permitted given the current training and education. Deviation from the Physician-Physician Assistant team practice model is not in the best interest of patient care.

The Board was informed that this verison of the bill is not the

current version pending in the legislature and that many of the concerns raised by the Board are addressed in the revised version.

The Board tabled vote on the bill and would revisit the legislation once the revised version became available.

THE BOARD, HOWEVER, DID NOTE THAT THE ABOVE COMMENTS REPRESENT THE CURRENT RESPONSE OF THE BOARD AS IT RELATES TO THE EXPANSION OF SCOPE AS CONTEMPLATED BY THE VERSION IT HAD BEFORE IT FOR REVIEW.

OLD BUSINESS

S876 - Seeks to require hospitals and health care professional to offer hepatitis C testing to certain individuals.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUPPORT THE PROPOSAL.

The Motion carried unanimously. It was made by Dr. Cheema and seconded by Dr. Angrist.

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OFF AGENDA ITEM

Certificate of Waiver

PHYSICIAN PRESCRIBING NALOXONE

Last month, the Board reviewed a new law, The Overdose Prevention Act, and noted that the Board's current regulations needed some amendment in order for the Act to be implemented. The Act provides under certain circumstances, immunity for civil and criminal liability of non-health care professionals who administer in an emergency setting naloxone hydrochloride, or any other similarly acting drug approved by the United States Food and Drug Administration, to a person believed in good faith to be experiencing an opioid overdose. The Act also provides civil, criminal, and professional disciplinary immunity for health care professionals and pharmacists involved in prescribing or dispensing the opioid antidote in accordance with the Act. As currently written our regulations require that a licensee examine a patient prior to writing a prescription which must be in the specific patient name, and perform the appropriate follow up with that patient. Under the OPA, the end user is defined to include a person who may be in a position to assist someone undergoing an overdose who should be armed with naloxone to assist that person. The Board, in March, was unclear whether the needed amendments to the regulation should be in the form of an emergent regulation or in the ordinary course. In the interim, the Department of Health issued a waiver applicable to EMTs

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and the waiver approach also seems to be the appropriate course for the BME, while at the same time continuing the usual process of amending the regulations. The waiver would apply to any physician who prescribes an opioid antidote, such as naloxone, to a person who is not at risk of an opioid overdose but who, in the judgment of a physician, may be in a position to assist another individual during an overdose and who has received patient overdose information on the indications for and administration of an opioid antidote, consistent with N.J.S.A. 24:6J-1 et seq., thus relieving the physician from the obligations imposed by N.J.A.C. 13:35-7.1, to perform an examination of the patient prior to dispensing a drug or issuing a prescription within certain exceptions and N.J.A.C. 13:35-7.2 which requires that a physician provide follow-up care and document certain information when a written prescription is issued. Notice of the availability of the waiver will be posted on the Board website and Dr. Paul will also draft a short article to send to societies and associations for posting and distribution.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO APPROVE THE WAIVER.**

The Motion was made by Dr. Cheema and seconded by Dr. Berkowitz. It carried unanimously.

INFORMATIONAL

Attached were the new rules concerning Prescription Blanks.

PUBLIC COMMENT

Dr. Ackerman addressed the Board about a motion for reinstatement of her license. DAG Hafner noted that there was a motion pending at this time and that the Board had declined oral argument on the issues.

Respectfully submitted,

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

WVR/br