

**State Board of Medical Examiners
Open Session Minutes
April 11, 2007**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, April 11, 2007 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey. The meeting was called to order by Dr. Paul, President.

PRESENT

Board Members Clemency-Kohler, Cheema, Ciechanowski, DeGregorio, Haddad, Jordan, Lambert, Mendelowitz, Nussbaum, Paul, Reichman, Salas-Lopez, Stanley, Strand, Walsh, Weiss and Wheeler.

EXCUSED

Board Members Criss, Criscito, Lomazow and Scott.

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorney General Dick, Deputy Attorneys General Flanzman, Gelber, Jespersen, Puteska, and Warhaftig; Executive Director Roeder, Medical Education Director Blanks and Interim Medical Director Robins.

**STATEMENT CONCERNING THE
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 11, 2006 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 1st day of November 2006.

ANNOUNCEMENTS

The Board congratulated Ms. Clemency Kohler on her recent appointment as Deputy Commissioner for the Department of Human Services.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MARCH 14, 2007 OPEN BOARD MINUTES.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MARCH 19, 2007 OPEN CREDENTIALS COMMITTEE MINUTES.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JANUARY 19, 2007 PHYSICIAN ASSISTANT ADVISORY COMMITTEE.

NEW BUSINESS

1. LEGISLATION

S 2534 Seeks to require licensed health care professionals and facilities to bill Medicare beneficiaries within six months of providing health care services.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUPPORT THE BILL IN CONCEPT AS IT SUPPORTED THE CONCEPT THAT PATIENTS SHOULD BE TIMELY BILLED FROM THE TIME

WITHIN WHICH THE SERVICES WERE PROVIDED. IT WOULD APPEAR, HOWEVER, THAT MORE WORK NEEDS TO BE DONE WITH THE LEGISLATION IN PARTICULAR AS IT RELATES TO DEFINING THE PERIODS OF TIME AT WHICH ACTION WOULD BE REQUIRED BY THE HEALTH CARE PROFESSIONAL. THE PROPOSAL ALSO DOES NOT PROVIDE FOR THE MISTAKES THAT ARE MADE BY THE PATIENT IN GIVING INSURANCE INFORMATION WHICH OFTEN DELAYS THE PAYMENT PROCESS NEEDLESSLY. THE PROPOSAL AS WRITTEN ASSUMES THAT THERE WOULD BE A TIMELY DECISION ON THE SUBMITTED BILLS FOR SERVICES WHEN IN REALITY IT MAY TAKE MONTHS AND THE PROCESS OF RECEIVING APPROVAL HAS BEEN TRUNCATED FOR VARIOUS REASONS. IT MAY BE NECESSARY TO CLARIFY THE BILL SO THAT THE TIME PERIOD DOES NOT BEGIN TO RUN UNTIL AFTER THE LAST INSURANCE PAYOR MAKES THE DECISION TO DECLINE PAYMENT.

A 4044 Seeks to establish the New Jersey Health Information Technology commission and provide for statewide health information technology plan.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO OPPOSE THE PROPOSED LEGISLATION. IT NOTED THAT THE ADVISORY COMMITTEE DID NOT HAVE REPRESENTATIVES FROM THE OSTEOPATHIC OR PODIATRIC SOCIETIES. ADDITIONALLY, REPRESENTATIVES FROM DIVISION OF CONSUMER AFFAIRS OR THE MEDICAL BOARD WERE NOT INCLUDED ON THE ADVISORY COMMITTEE. IT WAS ALSO NOTED THAT THIS WAS AN UNFUNDED MANDATE AND THE IDEA THAT THE FUNDING MAY COME FROM THIRD PARTIES MAY POSE CERTAIN ETHICAL PROBLEMS. ADDITIONALLY, THERE IS NOT A DEFINITION AS TO WHO OR HOW THE FEES COULD BE CHARGED AND THIS MAY LEAD TO AN ARBITRARY OR CAPRICIOUS MEANS OF ASSESSMENT. AS CURRENTLY PROPOSED, THE COMMITTEE ALSO FORESAW VARIOUS HIPAA VIOLATIONS IF IMPLEMENTED AS WRITTEN. FINALLY, THE COMMITTEE NOTED THAT MUCH WORK HAS ALREADY BEEN COMPLETED ON THE FEDERAL LEVEL AND AT DOBI AND/OR DEPARTMENT OF HUMAN SERVICES AND THIS MAY END UP DUPLICATIVE OF THE STUDY AND HANDLING OF THESE ISSUES AT THE FEDERAL LEVEL.

A 3908 Seeks to require health care providers to obtain informed consent from patients to use reprocessed medical devices.

A 3878 Seeks to require health care providers to obtain informed consent from patients for use certain reprocessed medical devices.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO TAKE NO POSITION ON THESE BILLS, EXCEPT THAT THE BOARD WANTED TO MAKE IT CLEAR THAT INFORMED CONSENT IS APPROPRIATE INFORMATION FOR EVERY PATIENT AND SHOULD ALWAYS BE DISCUSSED IN THE DOCTOR PATIENT RELATIONSHIP. AS THESE BILLS ARE WRITTEN, IT WOULD BE IMPOSSIBLE TO OBTAIN A VALID, INFORMED CONSENT IN LIGHT OF THE LACK OF CLINICAL DATA THAT WOULD BE NEEDED TO OUTLINE THE APPROPRIATE PARAMETERS OF INFORMED CONSENT. THE BILLS, IF PASSED, MAY CREATE MORE PROBLEMS THAN THE BENEFITS THEY SEEK TO ACHIEVE. MOST OF THE "COMPLICATIONS" ARE ANECDOTAL IN NATURE AND THERE IS LITTLE CLINICAL DATA COLLECTED THAT WOULD SUPPORT LEGISLATION OF THIS NATURE. IF THE INTENT OF THESE BILLS IS TO MAINTAIN BETTER CONTROL IN THE USE OF REPROCESSED MEDICAL DEVICES, OBTAINING INFORMED CONSENT WOULD NOT ACHIEVE THAT GOAL. IT WAS NOTED THAT THERE ARE REGULATIONS AND SOME CONTROL BY THE FDA THAT DO ADDRESS THE MANNER IN WHICH MEDICAL DEVICES ARE TO BE REPROCESSED. INFORMED CONSENT NECESSITATES DELINEATING ALL THE KNOWN COMPLICATIONS AND FACTS, WHICH ARE UNKNOWN AND WOULD ONLY CREATE MORE PROBLEMS THAN THE BENEFITS THEY SEEK TO ACHIEVE. THE MEDICAL ESTABLISHMENT HAS NOT REACHED A CONSENSUS AND THE FDA HAS PRELIMINARILY PROVIDED CERTAIN APPROVALS FOR THIS PRACTICE. PROBLEMS WITH REUSED MEDICAL DEVICES ARE NOT SOLVED BY OBTAINING INFORMED CONSENT AS IS REQUIRED BY THE PROPOSED LEGISLATION. Additionally, REPROCESSED MEDICAL DEVICES ARE

TOO GENERALLY DEFINED AND THESE BILLS ARE AN ATTEMPT TO MICRO MANAGE MEDICINE AND MAY ULTIMATELY UNDERMINE THE DOCTOR/PATIENT RELATIONSHIP.

OLD BUSINESS

INFORMATIONAL

PUBLIC COMMENT

Respectfully submitted,

Sindy M. Paul, M.D., M.P.H., President

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