

State Board of Medical Examiners
Open Public Session Minutes
April 14, 2004

The meeting of the New Jersey State Board of Medical Examiners was held on April 14, 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, Desmond, Farrell, Haddad, Harrer, Moussa, Paul, Patel, Perry, Robins, Rokosz, Trayner, Wallace, Walsh, and Weiss.

EXCUSED

Board Members Huston, Lucas, and Ricketti.

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorney General Dick, Deputy Attorneys General Ehrenkrantz, Flanzman, Kenny, Warhaftig and 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

Dr. Wallace noted that within the informational packet was a copy of Assembly Bill 50, which passed both houses. He noted that the bill seeks to establish by statute a minimum of malpractice coverage of \$1,000,000 per occurrence and \$3,000,000 per policy year. The bill also provides the discretion to the Board, through regulations, to increase these proposed minimum amounts.

Dr. Wallace also addressed the Board members with a status report on the Petition for rulemaking by the Medical Society of New Jersey concerning the mandatory coverage of medical malpractice. While a more formal report will be submitted to the Executive Committee at the end of April and a formal vote on the Committee's recommendation would be on the May Board agenda, he wanted to give the Board members a very brief overview of the preliminary recommendations of the Committee that had been working on this issue.

He reminded the Board that in October of last year, the Board deferred action on the petition and determined to seek additional input from the public at an informal conference from various segments of the healthcare community in order to assist the Board in its consideration of the petition. Specifically, the Board sought the view of interested persons regarding the following questions:

1. Whether the reduction in mandatory minimum coverage urged by the Petitioner would affect by way of reduction the insurance rates charged to licensees in this State and
- 2. What, if any, other approaches may be effective in decreasing medical malpractice insurance rates in the State.**

He continued by explaining that the conference was held on February 19, 2004 and was attended by approximately 200 interested parties. The Committee of the Board heard from twenty-four speakers representing

the Medical Society of New Jersey, various specialty societies, individual physicians, Citizen Groups, the Insurance Industry and the New Jersey Hospital Association. Additionally, written comments of those who did not want to speak at the Conference were also accepted. A copy of the transcript and the comments received were handed out to the Board members at the meeting.

He continued his report by stating that in reviewing the materials, almost everyone that spoke during the conference agreed that malpractice rates have continued to increase dramatically and this, in turn, has led to a drastic drop in the availability within the insurance market. A number of speakers opined that a number of physicians have either stopped practicing or have left the state. One speaker noted that in a 2002 survey by ACOG, for example, it was reported that 23% of the OB/GYNs had given up obstetrics in New Jersey. Patient access to care, therefore, in New Jersey is being seriously impacted. Another area of a consensus during the conference was that any approach to these complicated issues cannot be done in a piecemeal fashion, but will only be accomplished through a comprehensive approach to fix abuses in the legal system, obtain affordable premiums and ultimately to make the healthcare system better and safer for the patients of New Jersey. With the exception of the New Jersey Hospital Association and those representing the citizen groups, the medical community was in support of lowering the mandatory premiums.

Following the informal conference, a sub committee of the Board conducted a telephone conference call after reviewing all the materials and is prepared to preliminarily make recommendations to the Executive Committee. Recognizing its duty to protect the public in assuring that the reduced access to qualified physician care does not continue and that legitimate claims can be fully satisfied by appropriate insurance coverage, the Committee will be recommending that the Board deny the Medical Society's Petition for Rulemaking to reduce the mandatory malpractice insurance coverage requirements to \$300,000/\$900,000.

The Committee, however, did recognize that some relief is needed for the regulated community so that patient access to care in New Jersey is not diminished. The Committee will be preliminarily recommending that the Board consider amending its regulation to require mandatory coverage in the amount of \$500,000/\$1.5 million. The Committee believes, based on statistics from the Administrative Office of the Courts, prepared by the American Trial Lawyers of America, which demonstrate that the median jury award for malpractice cases in the year 2002 was \$300,000, that this level of coverage would be sufficient. By lowering the mandatory coverage limits, the Committee believes that a significant number of licensees in non-high risk areas of practice could avail themselves of the lower premiums.

Dr. Wallace continued by pointing out that this one action, however, will not accomplish or solve the problems of the many facets of this issue. The Committee believes and is prepared to recommend that in addition to the lower mandatory limits, comprehensive reform on many fronts must occur to fully address the medical malpractice crisis and healthcare, in general, in the State of New Jersey. Therefore, the Committee will also be recommending, consistent with the measures approved by the Board at its October 8, 2004 meeting, that at a minimum the following also should be implemented:

- (1) A statute of limitations change for minors alleging negligence;
- (2) Expanding the certificate of merit;
- (3) Establishing appropriate standards for experts;
- (4) Considering capping of non-economic damages as is done in several other jurisdictions, when combined with
- (5) Reforming the insurance industry including company structure and function; transparency; investments; reportage, etc.;
- (6) Reinforcing the Board's ability to more rapidly and aggressively deal with discipline and/or retraining; the job that the Board now does is limited by both resources and statute;
- (7) Considering the use of screening panels to evaluate meritorious or frivolous actions earlier on;
- (8) Considering the benefit/risk ratios of reducing the minimal coverage allowable by law, perhaps by considering selective discounts or surcharges for absolutely clean histories on the one hand or excessive claims experience on the other;
- (9) Evaluating the steps taken by other states to see their applicability in NJ;
- (10) Establishing privilege of self-critical analysis; and

(11) Evaluating the court's role in remittitur.

As Dr. Wallace stated earlier, these preliminary recommendations will be presented to the Executive Committee at the end of April and the Board will consider those recommendations of the Executive Committee at its Board meeting in May.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MARCH 10, 2004 MINUTES AS SUBMITTED.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MARCH 15, 2004 OPEN BOARD MINUTES AS SUBMITTED.

OLD BUSINESS

3. ASSEMBLY BILL 1913

A1913 Attached is the most recent version of Assembly Bill 1913 which seeks to establish a Health Care Professional Regulation Study Commission and seeks to require certain State professional licensing boards to take certain actions. It passed in the Assembly (77-2) on March 15, 2004.

The Executive Committee reviewed this bill at its March meeting and suggested the following comments.

New Section 3: No definition is provided to explain who would qualify as a patient advocate and the Committee questioned why this position was distinct and separate from public members. The Committee also did not support the term limits because this would result in experienced board members to be prematurely replaced and would not provide the Board with the consistency that is critical to Board decisions.

New Section 5: The Committee did not support the requirement that the Executive Director of the Board must be someone in the medical field. The position of the Executive Director demands an individual with strong organizational and managerial skills to oversee an operation such as the Administrative Office. The Executive Director also needs to be familiar with the statutory and regulatory processes. The amendments also do not acknowledge that the Executive Director is an employee of the Division of Consumer Affairs and that the position is already defined in N.J.S.A. 45:9-5.

New Section 5: The Executive Committee opposed the requirement that on the biennial renewal the Board gathers information relating to the "race and ethnicity" of the licensee. Additionally, the additional information to be collected during the renewal period would have to be added to an already six- page pre-renewal form. Requiring the Board to collect more information will make an already cumbersome process even more complicating and confusing. The collection of information such as this should not occur at the time of renewal, which is a time-sensitive period to have licenses renewed prior to the expiration of the license.

New Section 6: This amendment requires the Board to report to the Panel whenever a practitioner has three malpractice settlement/payments within five years. The Executive Committee noted that under the existing law, the Panel receives this information in the first instance and each time a new payment/settlement is reported to the Panel, the Panel also receives information concerning the history of payments made on behalf of that practitioner. This history is considered by the Panel with the new information received.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ENDORSE THE ABOVE LISTED COMMENTS TO THIS LEGISLATION.

NEW BUSINESS

4. SENATE BILL 647

S647 Seeks to establish rules concerning "Practice of Medicine Across State Lines." This bill was introduced on

January 13, 2004 and referred to the Senate Commerce Committee.

The Executive Committee recommends support for this bill.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED STRONG SUPPORT FOR THIS BILL. THE MEMBERS NOTED THAT THE BOARD OVER THE PAST SEVERAL YEARS HAS DEVELOPED THIS INITIATIVE AND APPLAUDED THE LEGISLATIVE EFFORTS IN INTRODUCING THIS BILL. IT BELIEVED THAT THIS LEGISLATION WILL HELP TO CLOSE SOME "LOOP HOLES" THAT CURRENTLY EXIST IN THE CURRENT STATUTORY CONSTRUCTION.

5. ASSEMBLY BILL 485

A485 Seeks to establish "Virtual Medical Monitoring Service Pilot Program" in the Department of Health and Senior Services. The bill was introduced on January 13, 2004 and referred to the Assembly Health and Human Services Committee.

Dr. Paul abstained from discussion and vote in this matter.

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

6. OFF AGENDA ITEM PETITION FOR RULEMAKING FROM THE MEDICAL SOCIETY PATIENT RECORD RULE

Executive Director Roeder handed out a copy of a petition for rulemaking from the Medical Society concerning proposed amendments to what a physician can charge for the copying medical records.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REFER THIS MATTER TO THE EXECUTIVE COMMITTEE FOR FURTHER REVIEW.

INFORMATIONAL

S 557 Seeks to establish the "Patient Safety Act" and to establish a medical error reporting system. This bill has passed both houses – in the Assembly on March 15, 2004 (78-0-1) and in the Senate on March 29, 2004 (36-0).

S 144 Seeks to require physician cultural competency training as a condition of licensure. This bill passed the Senate on March 29, 2004.

A 50 Seeks to establish the "New Jersey Medical Care Access and Responsibility and Patients First Act". This bill passed both houses – in the Assembly (46-17-16) on March 15, 2004 and in the Senate (21-15) on March 29, 2004.

PUBLIC COMMENT

Respectfully submitted,

David M. Wallace, M.D.
President

division: [bme](#) | [ocp](#) | [complaint forms](#) | [licensing boards](#) | [adoptions](#) | [proposals](#) | [minutes](#) | [consumer briefs](#)

departmental: [lps home](#) | [contact us](#) | [news](#) | [about us](#) | [FAQs](#) | [library](#) | [employment](#) | [programs and units](#) | [services a-z](#)

statewide: [nj home](#) | [my new jersey](#) | [people](#) | [business](#) | [government](#) | [departments](#) | [search](#)