

**NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS
OPEN BOARD MINUTES**

AUGUST 13, 2003

The meeting of the New Jersey State Board of Medical Examiners was held on August 13, 2003 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, Farrell, Haddad, Lucas, Moussa, Patel, Perry, Ricketti, Robins, Rokosz, Trayner, Wallace, Walsh and Weiss.

EXCUSED

Board Members Desmond, Harrer, Huston, and Paul

ALSO PRESENT

Deputy Attorneys General Dick, Erhenkrantz, Levine, and Kenny, Medical Director Gluck, and Executive Director Roeder

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 9, 2002 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 29th day of October 2002.

ANNOUNCEMENTS

Dr. Wallace thanked the Board for its vote of confidence in him by electing him to President. He appreciated the vote of support. He informed the members that in the coming weeks he would be reaching out to each member to learn more about their concerns and ideas. More than likely, he will be reviewing the current committee membership list and may make some adjustments. He acknowledged all the good work that has occurred during past President Harrer's tenure. He assured the Board that he would continue to follow up in areas that are still outstanding, such as the publication of the CME regulation. Additionally, he informed the Board that the Executive Committee is reviewing the Medical Society's Petition for Rulemaking relating to the medical malpractice insurance issue. He acknowledged that additional information had been received from the Medical Society and the Executive Committee is gathering additional information. Dr. Wallace also applauded the Board in the recent publication for notice and comment of the Chaperone regulation as a means of upholding its responsibility to provide a more adequate means of protecting the public. He believed that the key to the success of the regulation was communication to the licensed population. Dr. Wallace suggested that once it is in final form, the Board should reach out to the Medical Society of New Jersey, as well as the County Medical Societies, to assist in the dissemination.

He further acknowledged the Board's efforts to promulgate the new law which requires newly licensed physicians to attend an Orientation Course. He anticipated that the first orientation course would be held late fall/early winter of 2003. More than likely, the course will be held quarterly, with sessions being offered in the northern, central and southern portions of the State. As final dates become available, he will

let the Board know.

Dr. Wallace also recognized that significant progress has been made relating to the Alternative Credentialing in the Office Setting and directed the Board to the information contained in the Informational section of the Board's packet.

During his presidency, he would like to organize some new committees. Actually, he would like to resurrect the Budget Committee and as he understood it, Executive Director Roeder already has reached out to the Division of Consumer Affairs, requesting that June Levy meet with the Executive Committee either in August or September. Additionally, as directed by the Board at last month's meeting, he would form a Task Force to review the biennial renewal process. Paul Weber from the Medical Society of New Jersey has expressed interest in participating on the Task Force and Dr. Wallace informed the Board that he welcomed Mr. Weber's participation. He hoped to also form a committee to review the Board process and determine whether there is a way to improve the delays at different junctures

Finally, Dr. Wallace assured the Board that it would be the goal of his administration to be open and honest. He hoped that significant progress could be made in a critical self analysis of the Board's process. He reminded the Members of the need to attend meetings, to be on time, and to be fully prepared. The success of the Board can only be measured by the participation of its Members. He welcomed any suggestions that the Board members may have.

Credentials Meeting

Monday, August 18, 2003 - Sindy M. Paul, M.D., MPH

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JULY 9, 2003 OPEN BOARD MINUTES, WITH THE AMENDMENT THAT THE BOARD'S MOTION CONCERNING THE REQUEST FOR AN EXTENSION OF THE EXPIRATION OF LICENSES TO THE DIVISION OF CONSUMER AFFAIRS BE INCLUDED.

Dr. Perry entered the meeting.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JULY 21, 2003 OPEN CREDENTIALS COMMITTEE MINUTES AS SUBMITTED. It was noted that the patient names should be redacted in the Conti matter.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE LIST OF APPLICANTS FOR LICENSURE AND THE PHYSICIAN ASSISTANTS ADVISORY COMMITTEE PUBLIC SESSION MINUTES FOR JULY 20, 2003.

MINUTES THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JULY 21, 2003 OPEN MIDWIFE LIAISON COMMITTEE MINUTES.

NEW BUSINESS

1. VIDEO TAPE OF MINI RESIDENCY IN APPROPRIATE PRESCRIBING

A short video tape of an introduction to the new "Mini-Residency in Appropriate Prescribing" ("MRAP") was shown. The MRAP course is owned and sponsored by UMDNJ and administered by the School of Osteopathic Medicine, Department of Family Medicine. Dr. Vilensky, D.O., R.Ph., has forwarded this information to the Board and he is the MRAP Course Director. Also, attached was a copy of the brochure describing the course.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RESERVE APPROVAL OF THE COURSE AND AUTHORIZED DRS. WALLACE, CHEN, AND GLUCK TO TAKE THE

COURSE AND REPORT BACK TO THE EXECUTIVE COMMITTEE.

Dr. Patel entered the meeting.

2. LIMITED LIABILITY COMPANY

Attached was correspondence requesting Board action in response to a recent decision by Judge Villanueva in the case captioned Selective Insurance Company v. Medical Alliances, L.L.C, et al. In his opinion, Judge Villanueva seems to suggest that the limited liability company may not be a permissible format for the practice of medicine. Attached was a memorandum from Assistant Deputy Attorney General Joyce outlining this issue. Also attached were copies of the current regulations, draft regulations (January 1999), and the form letter which is generally sent out on behalf of the Board in response to requests whether it is a permissible, practice format. The Executive Committee reviewed the issue and recommended that an amendment to the current regulation be made to include the limited liability company as an appropriate practice format.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO AMEND THE REGULATION TO INCLUDE THE LLC AND LLP AS A PERMISSIBLE FORMAT FOR THE PRACTICE OF MEDICINE. ADDITIONALLY, THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO CONTINUE ITS REVIEW OF THE DRAFT CORPORATE PRACTICE REGULATIONS.

This decision should be communicated to Judge Villanueva.

3. LEGISLATION

A3589 Seeks to require DHSS to establish public awareness campaign and to develop policies and procedures for physicians and facilities concerning women with bleeding disorders.

The Executive Committee recommended opposing this legislation as it is an attempt to micro-manage health care and questions why this particular disease has been singled out.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE EXECUTIVE COMMITTEE'S RECOMMENDATION TO OPPOSE THIS LEGISLATION.

A1371 Seeks to define routine foot care services under an insurance policy.

The Executive Committee recommends taking no position on this legislation.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO TABLE DECISION ON THIS LEGISLATION. IT REQUESTED THAT DR. RICKETTI PROVIDE THE EXECUTIVE COMMITTEE WITH ADDITIONAL INFORMATION ON THIS ISSUE.

4. RULE PROPOSALS

N.J.A.C. 13:35-6.23 Presence of Chaperones. Comment period ends September 19, 2003.

N.J.A.C. 13:35-12 Licensure of Electrolgists and Electrology Instructors; Standards of Practice for Electrology; Proposed New Rules. Comment period ends September 19, 2003.

N.J.A.C. 13:35-44C Proposed Readoption with Amendments to the Audiology and Speech-Language Pathology Advisory Committee, Rules of the Audiology and Speech-Language Pathology Advisory Committee. Comment period ends September 19, 2003.

N.J.A.C. 13:35-10 Proposed Amendments, Athletic Trainers. Comment period ends September 5, 2003.

THE BOARD ACCEPTED THE RULE PROPOSALS AS INFORMATIONAL.

5. RULE ADOPTION

N.J.A.C. 13:35-6.20 Addition of Sincalide, a Synthetic Cholecystokinin, to List of Approved Non-Radioactive Materials Licensed Nuclear Medicine Technologists May Administer. Effective Date: July 21, 2003.

THE BOARD ACCEPTED THE RULE ADOPTION AS INFORMATIONAL.

OLD BUSINESS

6. AMENDMENT TO N.J.A.C. 13:35-6.14 DELEGATION OF PHYSICAL MODALITIES TO A LICENSED HEALTH CARE PROVIDER OR AN UNLICENSED PHYSICIAN AIDE

In the past couple of years, the issues of laser and the delegation to other professionals (i.e., a licensed nurse) have been considered by the Board. Periodically, the Board office receives inquiries in particular, who may perform laser-based hair removal. Consistently, the response has been that although no regulations are in place, the Board considers this the practice of medicine and cannot be delegated. Attached for the Board's consideration was a proposed amendment to N.J.A.C. 13:35-6.14 which would codify the Board's policy of precluding the delegation of the laser procedures to assisting personnel.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO TABLE DECISION ON THIS MATTER AND REQUESTED THAT THE PRIOR CONSIDERED DEFINITION OF LASER BE INCLUDED IN THE AMENDMENT.

INFORMATIONAL

ALTERNATIVE PRIVILEGES - INFORMATION AND APPLICATIONS

The deadline to apply for alternative privileges to administer anesthesia services and perform surgery and special procedures in the office setting is December 16, 2003.

As of Monday August 11, 2003, information, including answers to Frequently Asked Questions, and forms for the alternative privileges application process are available by clicking on

Alternative Privileges at www.nj.gov/lps/ca/highlights.htm

Individual questions can be e-mailed to the alternative privileges e-mail address

alternativeprivileges@lps.state.nj.us

A telephone number for questions will be available after September 15, 2003 and will be included in the September Board agenda and on the alternative privileges web page noted above.

Because the regulation provides for the delegation of the initial review of applications to an outside reviewing entity selected by the Board, certain details of the application process, including the use of electronic application submissions, are being finalized at this time.

Practitioners will be able to initiate the application process by e-mail or telephone by providing their names, addresses of record, telephone numbers, license numbers and e-mail addresses.

A licensee who requests application materials will receive the general section of the application (with certain identifying information from the licensee's file already included) and the requested specialty section

of the application.

PUBLIC COMMENT

Ms. Mandel, a representative from the State Society of Physicians Assistants, addressed the Board concerning its consideration of an amendment to N.J.A.C. 13:35-6.14. The Society opposes the Board's proposed amendment and views it as an attempt to micro-manage the practice of a PA, NP, or APN. She believed that the definition of the scope of practice for each is already clear and no changes needed to be made. It should be the decision of the physician associated with the PA to make the determination as to whether the PA has the appropriate training, skill, monitoring and supervision to allow the PA in the private practice setting to administer the laser.

A representative from the Nurses' Association also addressed the Board on the proposed amendment to N.J.A.C. 13:35-6.14. She recognized and supported the Board in its efforts to provide safe procedures to consumers. The proposal, however, would potentially impact those that act in the capacity as a first assistant in surgery because often a laser may be used. Additionally, the proposal seems to contradict the requirements under the joint protocols in which it is determined what is the appropriate scope of practice based on the training and skill of the APN or NP.

Dr. Rokosz complimented centralized licensing and the administrative office for the way in which staff assisted those physicians during the renewal process. A number of "late" renewing physicians informed him that the staff was courteous, helpful, and polite. They related to him that the renewals were processed quickly and professionally.

Dr. Mark T. Olesnick, M.D., President MSNJ, accompanied by counsel, Mr. Robert Conroy, also addressed the Board to provide an update on the medical malpractice issues. He informed the Board that Princeton Insurance Company, the largest malpractice insurer in New Jersey, no longer was writing policies and that PHICO recently went out of business. Due to these occurrences, many licensees are being left out in "limbo." The Medical Society has contacted the Department of Banking and Insurance and potentially there will be a meeting in the not too distant future with Princeton Insurance. At the same time, he reported that the Medical Society's experience is that the legislators have not been cooperative in attempting to put some measures in place. For these reasons, he could not stress enough the importance for the Board to act quickly on the Medical Society's petition for an amendment to the malpractice coverage requirements.

He reminded the Board that the Medical Society submitted materials to the Board, on or about June 26, 2003. In the June 26, 2003 submission, MSNJ recognized that its original suggestion of \$15,000/\$30,000 coverage limits may not be sufficient to protect either a patient or a physician. MSNJ suggested that the Board consider amending its regulation to \$300,000 per occurrence and \$500,000 per policy year. The \$300,000 per occurrence is based on state law in property liability, where insurance is not available, the state will pay up to \$300,000. Additionally, statistics from the Trial Lawyer's Association demonstrate that court data indicate that this is the medium jury trial award. The Society, however, recognized that its previously suggested \$500,000 per policy year may not be adequate and suggested during the presentation that the Board considers amending the requirements to \$300,000 per occurrence and \$900,000 per policy year.

He posited that the failure to provide these amendments will impact the issue of accessibility. Physicians who cannot afford the current premiums or who cannot get insurance coverage will have no choice but to discontinue practicing in the State. Ultimately, this is not in the best interest of the citizens in the State of New Jersey. He believed that establishing the requirements at \$300,000/\$900,000 would serve everyone's interest. It would allow physicians to maintain appropriate coverage that would be available in the untoward medical event. He believed that lowering the coverage requirement could impact some physicians in almost a fifty percent reduction in the cost of their premiums. He urged the Board to act quickly because of the medical malpractice crisis facing most physicians in New Jersey.

Ms. Ryan, general counsel to the New Jersey Hospital Association, informed the Board that her organization has worked tirelessly over the last two years with the Medical Society in attempting to resolve many of these issues. She acknowledged that the Medical Society's petition was probably filed out of frustration. She did not believe that the petition was in the best interest of the citizens of New Jersey and the Hospital Association opposes it. She also expressed the Hospital Association's desire to continue to work with the Medical Society toward effective Tort Reform.

Respectfully submitted,

David M. Wallace, M.D.
President