

New Jersey State Board of Medical Examiners

January 10, 2001

Open Board Minutes

The meeting of the New Jersey State Board of Medical Examiners was held on January 10, 2001 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey. The meeting was called to order at 9:00 a.m. by Gregory J. Rokosz, D.O., J.D., F.A.C.O.E.P., President.

PRESENT

Board Members Bradley, Chen, Danser, DiFerdinando, Farrell, Fernandez, Haddad, Harrer, Lucas, Perry, Ricketti, Robins, Rokosz, Trayner, Wallace and Walsh

EXCUSED

Board Members Desmond, Huston, Reid and Weiss

ALSO PRESENT

Deputy Attorneys General Dick, Gelber, Joyce, Kenny, Levine and Warhaftig, 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 11, 2000 which was transmitted to the STAR LEDGER, CAMDEN COURIER POST, ASBURY PARK PRESS, BERGEN RECORD and the TRENTON TIMES, all on the 1st day of November 2001 and the Atlantic City Press on the 17th day of 2001.

ANNOUNCEMENTS

The Bioethics Committee met on January 9 and discussed the clinical aspects and potential regulatory aspects of genetics. The Committee had a guest speaker. The consensus of the Committee was to support in concept the licensing of medical geneticists. The Committee also re-looked at the algorithms and at the DNR document and will make a recommendation in the future.

The Newsletter committee is looking to publish two newsletters, one for general articles and disciplinary actions and a separate publication for the withholding and withdrawing of life sustaining medical treatment policy with the Farrell amendments.

The Board received information from the Federation regarding a law firm doing a survey on a co-management issue in ophthalmology and optometry. The Executive Committee will re-look at the draft document referred to the Division of Consumer Affairs for a recommendation to the full Board in an upcoming meeting.

Dr. Rokosz also reported that the issue of alternate credentialing is moving forward and the committee continues to work with the consultant. He thanked Judy Gleason for the time devoted to the issue of alternate

credentialing.

MINUTES - THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE DECEMBER 13, 2000 OPEN BOARD MINUTES AS CORRECTED AND CLARIFIED REGARDING ASSEMBLY BILL 2995. Board Members Bradley, Fernandez and Lucas were not present for vote in this matter.

MINUTES - THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE DECEMBER 18, 2000 OPEN CREDENTIALS COMMITTEE CONFERENCE CALL MINUTES AS SUBMITTED. Dr. Fernandez was not present for vote in this matter.

MINUTES - THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE DECEMBER 21, 2000 CERTIFIED NURSE MIDWIFE OPEN COMMITTEE CONFERENCE CALL MINUTES AS SUBMITTED. Dr. Fernandez was not present for vote in this matter.

MINUTES - THE BOARD, UPON MOTION MADE AND SECONDED, APPROVED THE LIST OF APPLICANTS FOR LICENSURE AS PHYSICIAN ASSISTANTS FOR THE DECEMBER 15, 2000 PHYSICIAN ASSISTANTS COMMITTEE MEETING AND THE PUBLIC SESSION MINUTES FOR NOVEMBER 17, 2000. Dr. Fernandez was not present for vote in this matter.

OLD BUSINESS

1. BOARD OF COSMETOLOGY AND HAIRSTYLING PROPOSED NEW RULE ON GLYCOLIC ACID

The Board reviewed the draft of the proposed new rule regarding the use of glycolic acid creams from the Board of Cosmetology and Hairstyling. The draft incorporated the changes requested by the Board of Medical Examiners at a meeting on September 26, 2000. Dr. Perry indicated that the Board of Cosmetology and Hairstyling, at the Executive Committee meeting, had promised to supply literature to elucidate the use of this cream in particular to the relationship of concentration of glycolic acid in the cream. This information has not been received. D.A.G. Dick indicated that it was the Cosmetology Board's representation that these are all over the counter products, but there would be no problem if the Medical Board wished to delay this matter to receive literature until the January meeting. Concerns also were raised regarding a client having open cuts or sores because sores are not defined at all in the draft. The draft mentions circumstances when the client's skin becomes red or irritated during the treatment, but if the client's skin is covered with the cream, concerns were raised how can one see whether the skin is red or irritated. At its December meeting, the Board voted to table discussion until further information is received. The Board's considered a copy of the revised rule on glycolic acid/cream along with material requested from the Board of Cosmetology and Hairstyling.

Mr. Weisfeld of the New Jersey Medical Society commented that this is a complicated issue. He stated that the public expects this Board to protect it from harm done by those who practice beyond what they are qualified and competent to do.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REFER TO THE BOARD OF COSMETOLOGY AND HAIRSTYLING THE COMMENTS THAT THE MAXIMUM CONCENTRATION OF GLYCOLIC ACID CREAM SHOULD BE 15%, THE MINIMUM Ph FACTOR SHOULD BE 5 AND THE MAXIMUM TIME OF APPLICATION SHOULD BE 5 MINUTES AS WELL AS TO EXCLUDE CREAM IN THE PERI OCULAR AREA. THE USE OF GLYCOLIC ACID FOR NON-PHYSICIANS SHOULD BE LIMITED TO CREAMS AND NOT IN EXCESS OF 15%. THE BOARD WOULD ASK THAT THE BOARD OF COSMETOLOGY AND HAIR STYLING WORK THESE SUGGESTIONS INTO THE PROPOSED RULE AND REFER BACK TO THE MEDICAL BOARD FOR FURTHER REVIEW. Dr. Fernandez was not present for vote in this matter.

NEW BUSINESS

2. DRAFT REVISIONS TO THE MEDICAL FEE SCHEDULES FOR PERSONAL INJURY PROTECTION CLAIMS

The Administrative Office received correspondence from Senator John H. Adler, 6th District, Camden County last April which sought the Board's assistance in reviewing the draft revisions to the medical fee schedules for personal injury protection ("PIP") claims. Additionally, a follow-up letter was received from Senator Adler which forwarded responses from Donald Bryan, Director of the Division of Insurance to issues raised by Senator Adler. The Executive Committee reviewed the initial submission by Senator Adler at its last meeting. The Committee recognized that although the Board does not normally comment on fee issues, it recommended using comments formulated by Dr. Perry as the Board's comment. Recently, the Administrative Office received communication from Senator Adler. The rules have been proposed officially, and once again, he seeks the Board's input. The comment period ends January 17, 2001. As in the past, the Division of Consumer Affairs is coordinating the responses and will prepare a coordinated response on behalf of the Division.

Mr. Weisfeld of the New Jersey Medical Society commented and suggested that instead of focusing on the methodology used by the consulting firm, the Board's focus should emphasize access to care and quality of care issues. Mr. Weisfeld opined that proper care is being jeopardized by this proposal.

The Board referred this matter to a sub-committee of the Board to develop the appropriate response.

Ms. Bradley and Dr. DiFerdinando abstained from vote in this matter.

3. CERTIFIED NURSE MIDWIFE 1996 POLICY STATEMENTS AND INFORMAL CONFERENCE

In reviewing the Certified Nurse Midwife Committee Minutes at the last Board meeting, some questions were raised concerning the 1996 policy statements referenced in the minutes. The Board considered copies of the three policy statements issued in 1996. The Executive Committee recommended that the Certified Nurse Midwife Committee consider formalizing the policy statements into regulations during their current review of revising the CNM regulations. Additionally, the Board reviewed copies of the transcripts from the informal conference.

The Board accepted this as informational and recommended that as the Certified Nurse Midwife Committee is currently reviewing its regulatory scheme that the Committee incorporate these policy statements into the regulations.

4. DRAFT POLICY STATEMENT CONCERNING APPROPRIATE RESPONSE BY PHYSICIAN FOR REQUEST OF RELEASE OF PATIENT RECORDS

The Board considered proposed language concerning the appropriate response by a physician for a request for the release of patient records. D.A.G. Gelber will rework the wording relating to the amendments suggested and matter will be brought to the Executive Committee for finalization before re-submission to the Board. Upon final Board approval, the policy statement will be published in the Newsletter.

5. LEGISLATION

S-1911 The bill, known as the "Patient Protection Act," introduced by Senator Nicholas J. Sacco (Bergen and Hudson Counties), requires the reporting of certain information concerning health care professionals.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO OPPOSE THIS BILL. APPROPRIATE REQUIREMENTS OF REPORTING ARE ALREADY IN PLACE FOR SELF-REPORTING AND THIS BILL WOULD APPEAR TO BE REDUNDANT OF MEASURES CURRENTLY CODIFIED IN LAW. THE BILL ASSUMES THAT LICENSEES ARE IRRESPONSIBLE IN REPORTING AND CONTRARY TO CURRENT THINKING OF TEAM-BASED MEDICAL APPROACHES. THIS BILL ALSO ASSUMES INCORRECTLY THAT A NON-LICENSED, HEALTH CARE PROVIDER WOULD BE ABLE TO ASSESS AND DETERMINE WHEN A LICENSEE HAS CAUSED INJURY OR DEATH DUE TO NEGLIGENCE. A NON-LICENSED HEALTH CARE PROVIDER IS NOT IN THE BEST POSITION TO DETERMINE CAUSATION. IF PASSED, THIS BILL WOULD ALSO OPEN THE DOOR TO THE POSSIBILITY OF MALICIOUS AND FALSE REPORTING WHICH WOULD BE CONTRARY TO THE PURPOSE OF THE BILL. THE BILL ALSO ASSUMES THAT CURRENT PRACTICES AND PROCESSES IN PLACE IN HEALTH CARE FACILITIES IN PERFORMING PEER REVIEWS AND QUALITY ASSURANCE ISSUES ARE NOT APPROPRIATE AND NOT FUNCTIONING EFFECTIVELY.

A-2232 Introduced by Michael Patrick Carroll (Morris County), this bill requires the administrative law judge to make final decisions in contested cases.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO STRONGLY OPPOSE THIS BILL. THE BILL REMOVES THE DECISION MAKING AUTHORITY FROM THE AUTHORITY OF THE BOARD WITH THE EXPERTISE. MECHANISMS TO ADDRESS THE CONCERNS OF THIS BILL ARE ALREADY IN PLACE. FOR EXAMPLE, THE BOARD CONSISTS OF MEMBERS OF THE LICENSED PROFESSIONS, PUBLIC MEMBERS, LAY PERSONS, AS WELL AS REPRESENTATIVES FROM OTHER STATE AGENCIES * EACH WITH A BACKGROUND AND EXPERTISE NECESSARY TO PROPERLY EVALUATE AND DECIDE A CASE. ADDITIONALLY, IT SHOULD BE NOTED THAT THE BOARD DOES GIVE SUBSTANTIAL DEFERENCE TO THE ADMINISTRATIVE LAW JUDGE IN REVIEWING ITS DECISIONS, ESPECIALLY AS IT RELATES TO THE CREDIBILITY OF WITNESSES AS THE TRIER OF FACT. HOWEVER, THE PARTICULAR EXPERTISE OF THE BOARD IS CRUCIAL IN DECIDING THE CASE AND SHOULD NOT BE REMOVED FROM THE BOARD CHARGED WITH THE RESPONSIBILITY FOR REGULATING THOSE LICENSEES.

S-1989 Establishes hepatitis C education, prevention, screening and treatment programs and has been introduced by John J. Matheussen (Camden and Gloucester counties).

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ENDORSE THIS BILL AS IT FURTHERS THE GOAL OF EDUCATION AND ULTIMATELY IS PROTECTIVE OF THE HEALTH AND SAFETY OF THOSE AT RISK.

A-2801 Amends the "Uniform Anatomical Gift Act" regarding notification to designated persons about options to donate decedents' organs or tissues. Introduced by David C. Russon (Bergen and Passaic Counties).

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

INFORMATIONAL

* *Update on Physician Education and Training Requirements* - The Board received a copy of an article authored by Dr. Robins which appeared in the New Jersey Medicine, July 2000.

* National Association of State Controlled Substance Authorities Annual Conference - Stanley Tafil, Executive Officer Drug Control Unit, forwarded information from the conference. Dr. DiFerdinando commented that the Department of Health and Senior Services' task force is in the process of finishing a report on prevention and treatment of substance abuse in New Jersey. He reported that about half of those

demanding treatment currently get treated. The vision of New Jersey is treatment on demand. Specifically for opiate treatment, he opined that New Jersey will never be able to create enough Methadone maintenance treatment programs. The percentage of users injecting heroin appears to be increasing.

* D.A.G. Gelber reported that the Department of Environmental Protection, Bureau of Radiological Health did adopt its rules on quality assurance programs for medical diagnostic x-rays.

Respectfully submitted,

Gregory J. Rokosz, D.O., J.D., F.A.C.O.E.P.
President

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