

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

August 11, 2010

PAGE - 1

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, August 11, 2010 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 Paul Jordan, M.D.

Board Members Berkowitz, Cheema, Criss, Howard, Jordan, Lambert, Lomazow, Mendelowitz, Paul, Rajput, and Walsh. were present.

EXCUSED

Board Members Baker, Ciechanowski, DeGregorio, Iannuzzi, Scott, Stanley, Tedeschi, and Weiss.

ALSO PRESENT

Senior Deputy Attorneys General Dick, Flanzman, and Gelber; Deputy Attorneys General Levine, Puteska, and Warhaftig; and Executive Director William V. Roeder.

**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 Jersey State Board of Medical Examiners on September 9, 2009 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 October 2009.

ANNOUNCEMENTS

Dr. Jordan thanked the Board members for their vote of confidence in electing him as President. He also thanked Dr. Mendelowitz for his two years of valued service as President and Dr. Jordan specifically noted that Dr. Mendelowitz' sense of humor helped to make his tenure productive and enjoyable.

MINUTES

**THE BOARD, UPON MOTION MADE AND SECONDED,
VOTED TO APPROVE THE JULY 14, 2010 OPEN BOARD
MINUTES.**

NEW BUSINESS

1. LEGISLATION

A 3051 Seeks to create the "Medical Philanthropy Act."

The Board applauded the intent and the motivation of the legislation to encourage physicians to perform non compensated care for those that don't have coverage. The Board, however, believed the proposal was lacking adequate definition and parameters as to how to define that care and there also appears to be some inconsistencies relating to when the ""cap"" would be applied. It further recognized that this was another unfunded mandate for DHSS and DOBI and it would be costly to address the complexities attempted to be remedied by the proposed changes. The Board also opined that in reality, it may be difficult for physicians to provide 10% of uncompensated care.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO TAKE NO POSITION ON THE LEGISLATION.

The Motion was made by Dr. Mendelowitz and seconded by Dr. Lambert. It passed unanimously.

S 2168 Seeks to amend the Dispensing Statute.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO OPPOSE THE BILL AS IT DID NOT VIEW THE CHANGES AS IN THE BEST INTEREST OF PATIENT CARE.

Motion made by Dr. Paul and seconded by Mr. Walsh. It carried unanimously.

OLD BUSINESS

2. DERMATOLOGIC SOCIETY OF NEW JERSEY PETITION FOR RULEMAKING

The Dermatologic Society of New Jersey has requested that the Board amend its regulation, N.J.A.C. 13:35-2B.10, 6.10, and 6.16.

OPEN BOARD MINUTES

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

August 11, 2010

PAGE - 3

Dr. Jordan reminded the Board that on or about March 23, 2010, the Dermatological Society of New Jersey requested that the Board amend its regulations. The first requested amendment dealt with the current section which sets forth requirements for physician supervision of physician assistants. It was requested that this section be amended to provide that only Board certified or Board eligible dermatologists may supervise physician assistants who provide dermatological services. The petitioner also recommended that the Board set forth stricter requirements for advertising and soliciting practices to prohibit physicians from inappropriately referring to themselves as specialists in areas in which they may not be qualified. Finally, the petitioner requested that the Board amend its professional practice structure rule to limit the number of offices at which a dermatologist may supervise physician extenders, including physician assistants, to three offices other than the dermatologist's primary place of practice.

At its May meeting, the Board determined that further review and analysis of the issues raised by the petitioner were warranted in order to determine whether the requested amendments were necessary and reasonable. The Board referred this matter to its Executive Committee, and to its Physician Assistant Advisory Committee, for further deliberation and for the development of information for subsequent presentation to the Board. Such information has been collected and has been provided to the Board. This information necessarily includes a number of comments from interested parties on the issue and the comments offered during the Public Comment section of subsequent Board meetings.

The matter was before the Board for discussion and decision making.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO CLOSED SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS.

All parties, except Administrative and Counseling staff, left the room. Returning to Open Session, the Board announced its decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE PETITION FOR THE REASONS SET FORTH HEREIN. THE BOARD DENIED THE PETITIONER'S REQUEST TO AMEND N.J.A.C. 13:35-2B.10 TO PROVIDE THAT ONLY BOARD-CERTIFIED OR BOARD-ELIGIBLE DERMATOLOGISTS MAY SUPERVISE PHYSICIAN ASSISTANTS PROVIDING DERMATOLOGICAL SERVICES, AND DISAGREED WITH THE PETITIONER'S SUGGESTION THAT NON-DERMATOLOGISTS SHOULD BE PRECLUDED FROM PROVIDING DERMATOLOGICAL CARE. IN NEW JERSEY, PHYSICIANS ARE GRANTED A PLENARY LICENSE TO PRACTICE MEDICINE AND SURGERY. AS A RESULT, NOTHING IN THE BOARD'S ENABLING STATUTE OR THE REGULATIONS IN N.J.A.C. 13:35 WOULD PRECLUDE A LICENSED PHYSICIAN WHO IS NOT BOARD-CERTIFIED OR BOARD-ELIGIBLE IN DERMATOLOGY

OPEN BOARD MINUTES

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

August 11, 2010

PAGE - 4

FROM PROVIDING DERMATOLOGICAL SERVICES. THE BOARD NOTED THAT PHYSICIANS IN MYRIAD PRACTICE SPECIALTIES ASSESS AND TREAT DERMATOLOGICAL CONDITIONS WITHIN THEIR PARTICULAR SCOPES OF PRACTICE. THE BOARD NOTED ALSO THAT THE PHYSICIAN ASSISTANT LICENSING ACT, N.J.S.A. 45:9-27.10, DOES NOT LIMIT SUPERVISION OF PHYSICIAN ASSISTANTS TO THOSE PHYSICIANS THAT ARE BOARD-CERTIFIED OR BOARD-ELIGIBLE. RATHER, A PHYSICIAN IS REQUIRED TO SUPERVISE A PHYSICIAN ASSISTANT CONSISTENT WITH THE PHYSICIAN'S PARTICULAR SCOPE OF PRACTICE. THE BOARD'S REGULATIONS EXPRESSLY LIMIT A PHYSICIAN ASSISTANT'S SCOPE OF PRACTICE TO THOSE DUTIES THAT ARE ENCOMPASSED WITHIN HIS OR HER SUPERVISING PHYSICIAN'S SCOPE OF PRACTICE. SEE N.J.A.C. 13:35-2B.1, DEFINING "SUPERVISING PHYSICIAN" AS A PLENARY LICENSED PHYSICIAN IN GOOD STANDING WHO ENGAGES IN DIRECT SUPERVISION OF PHYSICIAN ASSISTANTS "WHOSE DUTIES SHALL BE ENCOMPASSED BY THE SUPERVISING PHYSICIAN'S SCOPE OF PRACTICE." THE BOARD BELIEVED THAT THE PHYSICIAN ASSISTANTS SUPERVISED BY THE PLENARY LICENSED PHYSICIANS PRACTICING IN THESE AND OTHER SPECIALTY AREAS ARE ADEQUATELY TRAINED TO PROVIDE DERMATOLOGICAL SERVICES TO PATIENTS.

THE BOARD ALSO NOTED THAT THE PETITIONER'S SUGGESTED AMENDMENT WOULD PRECLUDE PHYSICIAN ASSISTANTS WORKING IN PRACTICE AREAS AS DIVERSE AS PRIMARY CARE, FAMILY CARE, PEDIATRICS, EMERGENCY MEDICINE, INTERNAL MEDICINE, INFECTIOUS DISEASE, AND OBSTETRICS AND GYNECOLOGY, FROM ASSESSING AND TREATING DERMATOLOGICAL COMPLAINTS. THE BOARD BELIEVED THAT THE SUGGESTED AMENDMENT WOULD SIGNIFICANTLY INCREASE PHYSICIAN WORKLOAD IN THESE AND OTHER AFFECTED PRACTICE SETTINGS AND WOULD MAKE IT EXCEEDINGLY DIFFICULT FOR PATIENTS TO RECEIVE TIMELY CARE FOR DERMATOLOGICAL CONDITIONS. IN ADDITION, THE BOARD NOTED THAT PETITIONER HAD FAILED TO ARTICULATE A SUFFICIENTLY COMPELLING REASON TO JUSTIFY SUBJECTING THE PRACTICE OF DERMATOLOGY TO MORE ONEROUS REGULATION THAN OTHER AREAS OF PRACTICE. BECAUSE THE BOARD BELIEVED THAT THE PETITIONER'S REQUESTED AMENDMENT IS INCONSISTENT WITH THE PRACTICE OF

OPEN BOARD MINUTES

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

August 11, 2010

PAGE - 5

MEDICINE BY PLENARY LICENSED PHYSICIANS IN THIS STATE, AND IS ALSO INCONSISTENT WITH THE EXPRESS PROVISIONS OF THE PHYSICIAN ASSISTANTS LICENSING ACT, THE BOARD DECLINES TO AMEND N.J.A.C. 13:35-2B.10.

THE BOARD ALSO DENIED THE PETITIONER'S REQUEST TO AMEND THE PROFESSIONAL ADVERTISING AND SOLICITATION PRACTICES REGULATION SET FORTH IN N.J.A.C. 13:35-6.10. A PORTION OF THE PETITIONER'S SUGGESTED AMENDMENT WAS GENERAL IN NATURE, AND WOULD PROHIBIT PHYSICIANS FROM HOLDING THEMSELVES OUT AS BOARD-CERTIFIED SPECIALISTS IN A PARTICULAR SPECIALTY UNLESS A PHYSICIAN HAS RECEIVED FORMAL RECOGNITION IN THAT SPECIALTY BY THE SPECIALTY BOARDS ARTICULATED IN THE RULE OR OTHERWISE APPROVED BY THE BOARD. THE BOARD BELIEVED THAT THIS AMENDMENT WAS UNNECESSARY AS IT IS REITERATED THE PROHIBITION CURRENTLY CONTAINED IN THE RULE IN SUBSECTION (M). N.J.A.C. 13:35-6.10(M) CURRENTLY PROHIBITS A LICENSEE FROM ADVERTISING THAT HE OR SHE IS BOARD CERTIFIED IN A SPECIALTY UNLESS HE OR SHE POSSESSES CURRENT CERTIFICATION BY A SPECIALTY BOARD OR CERTIFYING ENTITY RECOGNIZED OR APPROVED BY THE BOARD.

THE REMAINDER OF PETITIONER'S REQUESTED AMENDMENT WAS SPECIFIC TO DERMATOLOGY PRACTICE AND WOULD PROHIBIT ANYONE FROM HOLDING HIMSELF OR HERSELF OUT AS A DERMATOLOGIST UNLESS HE OR SHE HAS COMPLETED A 3-YEAR FORMAL DERMATOLOGY RESIDENCY AFTER HIS OR HER FIRST YEAR OF INTERNSHIP, WHICH IS ACCREDITED BY THE AMERICAN BOARD OF MEDICAL SPECIALTIES (ABMS) OR THE AMERICAN OSTEOPATHIC ASSOCIATION (AOA), AND UNLESS HE OR SHE POSSESSES CURRENT SPECIALTY CERTIFICATION FROM THE ABMS OR THE AOA. BECAUSE, AS NOTED ABOVE, PETITIONER HAD FAILED TO ARTICULATE A COMPELLING REASON TO SINGLE OUT THE PRACTICE OF DERMATOLOGY FOR STRICTER REGULATION THAN OTHER AREAS OF PRACTICE, AND BECAUSE THE BOARD BELIEVED THAT THE ADVERTISING AND SOLICITATION REQUIREMENTS CURRENTLY CONTAINED IN N.J.A.C. 13:35-6.10 ADEQUATELY ENSURE THAT LICENSEES DO NOT MISREPRESENTING THE NATURE OF THEIR PRACTICES, THE BOARD DECLINED TO AMEND N.J.A.C. 13:35-6.10.

OPEN BOARD MINUTES

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

August 11, 2010

PAGE - 6

THE BOARD ALSO DENIED PETITIONER'S REQUEST TO AMEND N.J.A.C. 13:35-6.16 TO PROVIDE THAT ONLY BOARD-CERTIFIED OR BOARD-ELIGIBLE DERMATOLOGISTS MAY SUPERVISE PHYSICIAN EXTENDERS, INCLUDING PHYSICIAN ASSISTANTS, AND TO LIMIT THE NUMBER OF OFFICES AT WHICH A DERMATOLOGIST MAY SUPERVISE PHYSICIAN-EXTENDERS, INCLUDING PHYSICIAN ASSISTANTS. THE BOARD DECLINED TO AMEND THE RULE TO PROVIDE THAT ONLY BOARD-CERTIFIED OR BOARD-ELIGIBLE DERMATOLOGISTS MAY SUPERVISE PHYSICIAN ASSISTANTS BECAUSE, AS NOTED ABOVE, THE BOARD BELIEVED THAT PETITIONER'S REQUEST WAS INCONSISTENT WITH THE STATUTORY REQUIREMENTS IN NEW JERSEY BY WHICH PHYSICIANS ARE GRANTED A PLENARY LICENSE TO PRACTICE MEDICINE AND SURGERY, AND WAS ALSO INCONSISTENT WITH THE PROVISIONS OF THE PHYSICIAN ASSISTANT LICENSING ACT. MOREOVER, AS NOTED ABOVE, THE BOARD BELIEVED THAT THE PETITIONER'S REQUEST WOULD SIGNIFICANTLY CURTAIL PHYSICIAN ASSISTANT PRACTICE IN NEW JERSEY, POTENTIALLY LIMITING PATIENT ACCESS TO CARE.

THE BOARD ALSO DENIED PETITIONER'S REQUEST TO AMEND N.J.A.C. 13:35-6.16 TO LIMIT THE NUMBER OF OFFICES AT WHICH DERMATOLOGISTS MAY SUPERVISE PHYSICIAN ASSISTANTS TO A TOTAL OF FOUR OFFICES. ALTHOUGH THE PETITIONER SUGGESTED THAT THE AMENDMENT WAS NECESSARY TO ENSURE THAT PHYSICIANS SPEND AN APPROPRIATE AMOUNT OF TIME AT EACH OFFICE WHERE PHYSICIAN ASSISTANTS PRACTICE, THE BOARD DISAGREED AND BELIEVED THAT EXISTING REGULATIONS ADEQUATELY ADDRESS THE ISSUE OF PHYSICIAN ASSISTANT SUPERVISION. N.J.A.C. 13:35-2B.10 IMPOSES STRINGENT SUPERVISING REQUIREMENTS ON PHYSICIAN ASSISTANT PRACTICE. SPECIFICALLY, THE RULE PROVIDES THAT, IN AN OUTPATIENT SETTING, A PHYSICIAN ASSISTANT'S SUPERVISING PHYSICIAN MUST BE CONSTANTLY AVAILABLE THROUGH ELECTRONIC COMMUNICATIONS FOR CONSULTATION OR RECALL. IN ADDITION, THE SUPERVISING PHYSICIAN IS REQUIRED TO REGULARLY REVIEW THE PHYSICIAN ASSISTANT'S PRACTICE, AND MUST PERSONALLY REVIEW ALL CHARTS AND PATIENT RECORDS, AND COUNTERSIGN ALL MEDICAL ORDERS WITHIN SEVEN DAYS OF THE PHYSICIAN ASSISTANT'S ENTRY OF THE ORDER IN THE PATIENT RECORD. WHEN A PHYSICIAN ASSISTANT ENTERS A

OPEN BOARD MINUTES

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

August 11, 2010

PAGE - 7

MEDICAL ORDER FOR THE PRESCRIPTION OR ADMINISTRATION OF MEDICATION, THE SUPERVISING PHYSICIAN MUST REVIEW AND COUNTERSIGN THE ORDER WITHIN 48 HOURS OF THE ENTRY. IN ADDITION, THE BOARD NOTED THAT N.J.A.C. 13:35-2B.10 LIMITS THE NUMBER OF PHYSICIAN ASSISTANTS THAT A PHYSICIAN MAY SUPERVISE. CURRENTLY, THE RULE PROVIDES THAT IN ALL PRACTICE SETTINGS, OTHER THAN PRIVATE PRACTICES THAT ARE NOT HOSPITAL BASED OR INSTITUTIONALLY AFFILIATED, A PHYSICIAN MAY SUPERVISE NO MORE THAN FOUR PHYSICIAN ASSISTANTS AT ANY ONE TIME. IN PRIVATE PRACTICE SETTINGS THAT ARE NOT HOSPITAL BASED OR INSTITUTIONALLY AFFILIATED, A PHYSICIAN MAY SUPERVISE TWO PHYSICIAN ASSISTANTS, ALTHOUGH THE BOARD NOTES THAT IT WILL BE PROPOSING, IN CONSULTATION WITH THE PHYSICIAN ASSISTANT ADVISORY COMMITTEE, AN AMENDMENT TO THIS REQUIREMENT IN THE NEAR FUTURE. THE PROPOSED AMENDMENT WOULD LIMIT THE NUMBER OF PHYSICIAN ASSISTANTS THAT A PHYSICIAN MAY SUPERVISE, IRRESPECTIVE OF PRACTICE SETTING, TO FOUR. THE BOARD BELIEVED THAT THE REQUIREMENTS IN N.J.A.C. 13:35-2B.10 HELP TO ENSURE THAT PHYSICIAN ASSISTANTS ARE ADEQUATELY SUPERVISED, THEREBY ENSURING THE HEALTH, SAFETY AND WELFARE OF THE PATIENTS THEY TREAT. THE BOARD, THEREFORE, DECLINED TO AMEND N.J.A.C. 13:35-6.16.

2. EXECUTIVE ORDER NUMBER TWO

Pursuant to Executive Order #2, all State agencies are required to: “. . . identify those regulations and processes that impede responsible economic development as a result of: i) providing insufficient or contradictory guidance (inter and intra-agency) to applicants for permits, thus leading to delay or denial of the permit applications; or ii) exceed legislative intent or federal standards without well-documented cause, thus placing the state at a competitive disadvantage in attracting investment and jobs.”

The Board was asked to consider the following items which had been identified by the Executive Committee as possibly falling into the Executive Order # 2 criteria. At its last meeting, the Board tabled decision and referred the issues back to the Executive Committee for additional review.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO

**MAKE THE SUGGESTED CHANGES AND TO REFER THE MATTER
TO THE REGULATORY ANALYST FOR PREPARATION OF THE
LANGUAGE EFFECTUATING THE CHANGES.**

INFORMATIONAL

PUBLIC COMMENT

Dr. Geffner thanked the Board for its decision on the Dermatologic Petition.

Respectfully submitted,

Paul Jordan, M.D. - President

WVR/br