

MICHAEL A. BARBIERI
STATE REPRESENTATIVE
Eighteenth District



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

COMMITTEES
Health & Human Development,
Chair
Education
Energy
Gaming & Pari-mutuels
Labor

Health & Human Development Committee
Meeting Minutes
June 16, 2010

Chairman Barbieri called the meeting to order at 3:35 p.m. Members present included Reps. Q. Johnson, Kowalko, Miro, Kovach, Schooley, Scott, Jaques, Oberle, and Brady. Rep. Keeley was also in attendance. For a list of guests, please see the attached document.

Rep. Barbieri referred to Rep. Keeley to speak on behalf of **HB 459, AN ACT TO AMEND TITLES 24 AND 29 OF THE DELAWARE CODE REALTING TO THE MEDICAL PRACTICE ACT, THE BOARD OF MEDICAL PRACTICE AND THE DEPARTMENT OF THE STATE.** Rep. Keeley introduced Mike Barlow, Attorney for the Governor's Office, to speak in detail on the lengthy bill.

Mr. Barlow stated that the legislation was in reaction to the allegations and recent investigations regarding the Dr. Bradley case. The bill reflects findings from the investigations and updates current law to ensure best practices. In particular, the act improves the reporting process of the Board of Medical Practice by strengthening the board's authority to police unprofessional conduct and clarifying and simplifying the board's administrative procedures to improve the efficiency of the board and its ability to work with law enforcement. This act also makes certain similar changes that would affect all boards administered by the Division of Professional Regulation.

Mr. Barlow stated that section one identifies problems with hospitals in regards to the lack of disciplinary policies. It actually broadens the scope of hospital disciplinary actions that must be reported to the board. Some hospitals implement short-term disciplinary actions for which no report is made to the board. The proposed revision would require all hospital disciplinary actions affecting privileges at a hospital to be reported to the board. Section two requires physicians to report any civil or criminal investigation against them in any jurisdiction that concerns their licensure and section three requires the board to permanently revoke the certificate to practice of someone convicted of a felony sexual offense.

Mr. Barlow continued, stating that sections 4-6 amend the definition of "unprofessional conduct" to improve and clarify the reporting of such conduct. Section 4 clarifies that the obligation of law enforcement to report unprofessional conduct by a physician is not limited to situations in which a conviction or admission has been obtained. Section 5 alters part of the definition of "unprofessional conduct" to give the board additional

flexibility in evaluating whether a physician's conduct in the practice of medicine is so deficient as to require action by the board, and to state expressly that sexual misconduct can be a basis for discipline. Section 6 provides that the failure to report unprofessional conduct by persons with a duty to do so is a violation subject to the disciplinary authority of the Board of Medical Practice and can be enforced by the board by means of a fine or limitations on the license to practice.

Other changes promote communication between law enforcement agencies and investigations. Mr. Barlow exemplified section 7 which clarifies the duty of law enforcement agencies to report criminal conduct of a physician to the Division of Professional Regulation and to report when the criminal investigation is complete and sections 10-13 which simplify the investigatory process of the board and clarify the responsibilities of law enforcement and the Division of Professional Regulation when a complaint is made about allegedly criminal conduct by a physician. These sections build on current law requiring the Executive Director to communicate with the Department of Justice. Pursuant to these new sections, the Department of Justice could make a written request to the Executive Director of the Board to suspend any current or pending investigation, and that request would suspend the Executive Director's duties during an investigation.

Additionally, section 8 of the legislation eliminates the requirement that reports to the board by persons without a mandatory reporting obligation can be made orally and need not be in writing. Also, the legislation addresses how Delaware handles patient files and records, streamlines the hearing process and even creates the appointments of hearing officers to help with the hearing processes.

In regards to section 5 of the legislation, Rep. Scott asked what constitutes a “pattern of negligence.” Mr. Barlow responded that the legislation does not define pattern because it was intended for the Board of Medical Practice to determine a pattern based on the context of the complaint. However, he stated that it is possible for as few as two events to be described as a pattern.

Rep. Scott questioned section 6 changes, which state “the failure to report unprofessional conduct by person with a duty to do so is a violation subject to disciplinary authority.” He asked who is included in “persons”? Mr. Barlow stated that all physicians are included in this group. He stated that this section stresses the idea that the willful failure to report negligence should be punished.

Rep. Scott stated that the legislative revisions did not include any methods to evaluate the success of these revisions. He asked how the state intended to measure the effectiveness of these revisions in the future. Mr. Barlow responded that the legislation does not include self analysis because they have proposed that the yearly medical board reviews be made public to serve as an evaluation tool.

In regards to section 10, Rep. Jaques asked what practicing on a restricted or unrestricted basis referred to. Mr. Barlow stated that when deciding whether a physician needs to be

sanctioned, the physician is allowed to practice on a restricted basis. This means that another person or investigator is required to be in the room with the doctor when seeing a patient. Mr. Barlow clarified that the restricted basis was just a means for practicing medicine during an investigation.

Rep. Jaques asked for some clarification on section 11(e) about the Division of Professional Regulation suspending an investigation upon request from the Delaware Department of Justice. Mr. Barlow stated that this section just provides the Attorney General the opportunity to work with and communicate with a police body and the authority to ask another office to not start an investigation until their investigation is completed.

Rep. Kowalko asked if these revisions were applicable to dentists. Mr. Barlow replied that the legislation applies to physicians in particular, but that some of the proposed changes address Title 29, which do affect all acting board. Rep. Kowalko suggested having consistent guidelines applicable to all boards.

Rep. Jaques asked if the legislation addressed nurse practitioners and if all doctors were covered in the legislation. Mr. Barlow stated that the legislation was specifically addressed to all physicians regardless of their specialty.

Wayne Smith, President & CEO of the Delaware Healthcare Association, believes the legislation was an appropriate response to the recent unfortunate event. However, he voiced concern in regards to transparency the legislation could enact during medical peer reviews. He defined peer review as the process whereby physicians evaluate medical procedures in order to learn from each other. Peer reviews help evaluate methods of treatment and encourage the discussion of other possible procedures for future treatment. He stated peer reviews were a critical part of the medical field that that if information discussed during peer reviews were made public, there would be a negative impact on the learning process and those choosing to participate in the peer review process. He proposed a change in language in Section 21, line 110, to include “clinical information” as being exempt. This change in language would ensure that any scientific information discussed during a peer review would remain confidential.

Rep. Kowalko stated that his interpretation of lines 108-110 was that information was only made public when a disciplinary act had already occurred. Rep. Keeley stated she would be happy to discuss his concerns about the language of that section and the possibility of an amendment.

Nitin Rao, from the Medical Society of Delaware, stated his support of the legislation but also proposed a language change. He suggested changing language surrounding the idea of these “hearing examiners”. He stated that the legislation does not provide requirements of training for these examiners and hoped some guidelines for them could be added.

James Collins, from the Division of Professional Regulation, stated that currently, once a complaint is made, a physician is assigned as co-investigator during the investigation. He stated a hearing examiner would be very similar to this co-investigator position.

Rep. Keeley thanked everyone for their time and effort with the drafting of this bill. She stated that she sponsored a similar bill about six years ago that did not make it out of committee. She now questions if that bill could have prevented these unfortunate incidents with Dr. Bradley but hopes that the passing of this bill will prevent anything like it in the future.

Rep. Scott motioned to release the bill. Rep. Schooley seconded the motion. The bill was released from committee with one favorable vote and eight votes on its merits.

Rep. Barbieri introduced **SB 236, AN ACT ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO QUALIFICATIONS OF PSYCHOLOGISTS.**

He stated that this bill removes the provision that allows for the registration of psychological assistants who hold a master's degree that is "based on a program of studies that is psychological in content and specifically designed to train and prepare psychologists but who is not working toward full licensure as a psychologist." Pursuant to the bill, a psychological assistant must have completed all the course requirements for a doctoral degree in psychology. A grandfather provision is included for existing registered psychological assistants who maintain their registration. The change limits psychological assistants to those people who meet the experience requirement under §3508(a)(2) for full licensure as a psychologist.

Rep. Schooley motioned to release the bill. Rep. Scott seconded the motion. The bill was released from committee with 1 favorable votes and 8 votes on its merits.

Rep. Q. Johnson introduced **SB 259, AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO LICENSING OF GENETIC COUNSELORS.** He stated that this bill establishes a new subchapter in Chapter 17 of Title 24. It defines the practice of genetic counseling and specifies the grounds for obtaining the license to practice genetic counseling. It also sets out the grounds for disciplining a licensee and makes the unlicensed practice of genetic counseling a Class G felony. He stated that he has worked on this issue since last summer and that is it a public safety issue because Delaware does not currently have regulations for those claiming to be genetic counselors. He introduced Zohra Ali-Khan Catts, from Christiana Care and the Helen F. Graham Cancer Center, to answer any questions regarding the legislation.

Rep. Scott asked how many genetic counselors Delaware currently has. Rep. Q. Johnson stated that they currently do not have any licensed genetic counselors and clarified that the legislation creates a council for future genetic counselors.

Rep. Scott questioned how those council members will be licensed. Ms. Catts clarified that currently genetic counselors are certified by a national entity and that the National

Society of Genetic Counselors accredits the process. She stated that the hope is that already nationally certified counselors will be on the council so they can certify others. She did state that council members must be licensed themselves before they can license others.

Rep. Kovach questioned why this legislation was developed and how it will improve the quality of life in Delaware. Rep. Q. Johnson stated that personal medicine has become a forefront in the healthcare debate. He stated that identifying genes and any future risks factors for disease have become important for future research and the health of future generations. Ms. Catts also stated that there have been incidents where counselors who are not certified have been providing services and the information provided is incorrect. She also stated that businesses have been providing these services to the community and while the companies have been making a lot of money from the services, again the information is not correct or adequate. This legislation would just ensure that the community is receiving correct information.

Rep. Schooley motioned to release the bill. Rep. Scott seconded the motion. The bill was released from committee with 9 votes on its merits.

Rep. Barbieri introduced **HB 456, AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE TREATMENT OF MINORS BY PHYSICIANS UNDER THE MEDICAL PRACTICE ACT.** He stated that this act would require a physician or physician's assistant treating a person 15 years of age or younger to have another adult in the room when that child is disrobed, partially disrobed or otherwise undergoing certain physical examinations. The additional adult may be either a family member or other caretaker, or an adult staff member or colleague of the licensee.

Mr. Barlow stated that Section 2 clarifies that a parent, guardian or other caretaker, or an adult staff member, shall be present when a person licensed under this chapter provides treatment to a minor patient who is disrobed or partially disrobed or during a physical examination involving the breasts, genitalia or rectum, regardless of sex of the licensed person and patient, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the patient when practicable. For the purposes of this section, "minor" is defined as a person fifteen years of age or younger, and the term "adult staff member" is defined as a person eighteen years of age or older who is acting under the direction of the licensed person or the employer of the licensed person or who is otherwise licensed under this chapter.

Rep. Blakey showed concern that legislation did not have any requirement to record who the chaperone was. He believed this would be valuable information and suggested requiring some method to record who the chaperone was.

Mr. Collins stated that many physicians will record the chaperone on their own medical records. He did understand his concern but stated that when drafting the legislation they wanted to stay away from procedures that doctors many deem as interrupting care.

Wayne Smith, President & CEO of the Delaware Healthcare Association, voiced concern regarding the applicability of the bill. While he supported the concept of a chaperone he believed it would affect routine services and check-ups. For example, he stated that with this legislation, listening to a child's chest with a stethoscope or even just changing a baby's diaper would need a chaperone. He believed this would affect timely care. He suggested that hospitals should develop appropriate policies to address the chaperone issues rather than have legislation to mandate it. Rep. Kovach suggested that Mr. Smith work with Mr. Barlow to address some of these issues and possibly draft some amendments.

Rep. Jaques motioned to release the bill from committee. Rep. Scott seconded the motion. The bill was released from committee with 4 favorable votes and 3 votes on its merits.

Rep. Barbieri introduced **HB 458, AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO REGISTRATION TO PRACTICE MEDICINE**. He stated that this act improves the licensure and renewal requirements of Delaware law for physicians. Section 1 requires an applicant for licensure or renewal to disclose any professional regulatory investigation, and requires physicians to be fingerprinted by the State Bureau of Identification at least every ten years. Section 2 authorizes the State Bureau of Identification to release any subsequent criminal history it receives regarding licensees to the Board of Medical Practice, and Section 3 requires the Board to review that information at least once very six months. Section 4 addresses the biennial renewal of medical licenses to require that certain information and assurances currently required only initial license applications be submitted. Renewal requests would need to be accompanied by a sworn statement that the applicant has not been convicted of a crime substantially related to the practice of medicine, has not been professionally penalized for or convicted of drug addiction, has not had a license to practice medicine suspended or revoked in other jurisdictions, and has not been disciplined by a hospital. He referred to Mr. Barlow to describe the bill in more detail.

Mr. Barlow stated that this legislation is directed specifically at physicians' initial application and renewal process and focuses on the disclosure of information of investigations conducted on physicians as part of the application process. He stated that section 1 states that "an applicant for initial or renewal certification to practice medicine in this state must disclose whether the applicant has ever been the subject of an investigation by any licensing authority, medical association, hospital or other healthcare institution. The board may require an applicant to provide sufficient documentation to enable the board to determine whether investigation or a diagnostic mental or physical examination is necessary to determine the applicant's qualifications for certification to practice medicine in this state." Additionally, "all individuals licensed to practice medicine in this state shall be required to be fingerprinted by the State Bureau of

Identification every ten years, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees who received their initial license to practice medicine on or before July 1, 2007 shall submit by January 1, 2012, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check." And finally, the legislation requires that the division shall review the criminal history of all individuals licensed to practice medicine in the state on a periodic basis, at a minimum, of once every six months.

Rep. Scott questioned the 10 year finger printing requirement of the bill. It was clarified that fingerprints can change due to weight gain or scarring etc. Re-fingerprinting just provides a more accurate print.

Rep. Jaques motioned to release the bill from committee. Rep. Scott seconded the motion. The bill was released from committee with 7 votes on its merits.

Without any further questions or comments, Rep. Barbieri adjourned the meeting at 4:53 p.m.

Respectfully submitted by,

Amy Clark