

**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 24, 2010

Chairman Barbieri called the meeting to order at 12:45 p.m. Members present included Reps. Jaques, Q. Johnson, Scott, Schooley and Kowalko. Rep. Keeley was also present. For a list of guests, please see the attached document.

Chairman Barbieri referred to Rep. Schooley to introduce **SB 300, AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO CHILDHOOD LEAD POISONING PREVENTION**. She stated that the state of Delaware currently requires lead poisoning screening for children at 12 months of age. However, because many children are not yet sufficiently mobile prior to 12 months of age to have full exposure to potential lead hazards in their environments, it has become common practice in other states to test some children at higher risk for lead exposure at 24 months of age as well. This act thus creates a formal screening process so that children at high risk for lead exposure can receive an additional screening test at 24 months of age, while children at lower risk will continue to receive only the currently required screen at 12 months of age. She noted the decreasing statistics in the KIDS Count 2009 booklet for children reported having lead poisoning and worried this was due to the lack of continued testing.

Chairman Barbieri asked who would pay for the additional testing.

Debbie Gottschalk, from the Department of Health and Social Services, stated that Medicaid already pays for the service. She stated this additional testing is only for children deemed at risk, such as those living in older homes, and that insurance pays for the screening.

Rep. Q. Johnson stated with his childcare facilities, it a requirement to have a lead test for all children. He questioned how this legislation would affect childcare facilities and how the facility would determine which children are high risk.

Rep. Kowalko stated that the legislation would not impose anything new on childcare facilities. He clarified that the legislation does not replace the 12 month requirement. All children would still receive this service thus not affect enrollment requirements at childcare facilities. The legislation merely enhances the safety of children deemed high risk because it adds a second test screening.

Rep. Keeley questioned if the decrease in children reported having lead poisoning was due to the lack of testing or actually due to the past de-lead programs conducted by the state. Rep. Kowalko responded that while he believes those programs were a factor, he does not want to be over-optimistic in thinking they solved the lead poisoning problem.

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

**SB 296, AN ACT TO AMEND THE DELAWARE CODE RELATING TO THE BOARD OF MEDICAL PRACTICE**, was next on the agenda. Chairman Barbieri referred to Rep. Keeley to introduce the bill. She stated that this act reorganizes and renames the Board of Medical Practice to better reflect the board's responsibilities and improve public understanding of the board's role. The act also expedites resolution of emergency cases, improves the investigatory authority of the board, clarifies the protections for persons reporting unprofessional conduct, and allows for greater input by persons who are not medical professionals. In particular, section 1 changes the name of the "Board of Medical Practice" to the "Board of Medical Licensure and Discipline," which will better reflect the responsibilities of the board. Sections 2 - 3 change the composition of the Board of Medical Licensure and Discipline to increase the number of public members and add the Director of Public Health. Section 4 eliminates a provision of the code dating to the 1990 expansion of the board that is no longer applicable and clarifies that appointments following a board member's resignation are for the duration of the remaining term. Sections 5 and 6 create an expedited process for emergency suspensions of licenses to practice medicine. The sections would allow the board to temporarily suspend a license on the joint determination of the board president and the Secretary of State that the person's continued practice is a clear and immediate danger to public health. Section 7 enables the Board of Medical Practice to obtain information concerning peer reviews without regard to the outcome. Section 8 eliminates the ability of the board to enter into agreements with other entities, including the Medical Society of Delaware, to facilitate its duties under the Medical Practice Act. Instead, Section 9 grants the Division of Professional Regulation the ability to retain independent, third party treatment providers to provide services to licensees. Section 10 also requires the Division of Professional Regulation to provide complainants access to a division investigator to discuss issues or concerns regarding a report or complaint and clarifies that the protections for reporting conduct to the board extends to all reports of violations of the Medical Practice Act.

Rep. Keeley continued, stating that the amendment strengthens the bill. It addresses one of her main concerns of knowing if the changes were actually effective. This amendment provides that the Joint Sunset Committee shall review the Board of Medical Licensure and Discipline after January 1, 2013 to determine the effects of the changes made by this act. It also expands the scope of professionals who may serve as public members of the Board of Medical Practice, allowing licensed professionals in health-related fields, other than persons licensed under the Medical Practice Act, as well as persons who work in health-related businesses or who otherwise provide goods or services to physicians to serve as public members.

Rep. Kowalko asked if the legislation conflicts with Sunset Committee rules. Rep. Keeley responded that legislation trumps committee rules so the committee would be allowed to review the effects. She also stated that Senator Marshall has two bills that will complement this legislation and asked James Collins, from the Division of Professional Regulation, to speak on behalf of Senator Marshall's bills.

Mr. Collins stated that Sen. Marshall's first bill requires the Board of Medical Practice to establish sanctioned guidelines. The second bill addresses incidents where physicians continue to practice with a suspended license. He clarified that currently when the board suspends or revokes a physician's license, the doctor can still see patients until the order is actually signed. The legislation would thus not allow these physicians' to see patients during this waiting period anymore.

Chairman Barbieri asked if sections five and six of SB 296, relating to an expedited process for emergency suspensions of licenses, differed from the described Sen. Marshall's bills. Mr. Collins stated that currently the board needs a quorum to take emergency action. This legislation just changes that to allow for the board to make decision about suspensions quickly and without a quorum.

Chairman Barbieri questioned what constitutes an emergency and if there was a timeline for emergency cases. Mr. Collins stated that an emergency is constituted by the department. If they deem a case an emergency, they bring it to the top of list. He stated that there is not an exact timeline for emergency cases but that an investigation can be completed as quickly as seven days.

Rep. Kowalko asked if the Board of Medical Practice has jurisdiction over dentists. He voiced concern over the possibility of similar cases occurring in that field and believed that the provisions of this legislation should be applied to all medical fields.

Mr. Collins stated that he would relay the message to the administration and agreed that provisions for other medical fields should be discussed.

Rep. Jaques questioned whether the legislation included registered nurses. Mr. Collins stated that registered nurses would be included under the definition.

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

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. Barbieri introduced **SB 297, AN ACT TO AMEND TITLES 16 AND 24 OF THE DELAWARE CODE RELATING TO THE REPORTING OF ABUSE AND UNPROFESSIONAL PRACTICE**. He stated that this act promotes the reporting of child abuse and allegations of unprofessional practice by healthcare practitioners and institutions. Section 1 clarifies that the mandatory duty to report child abuse or neglect applies to all persons and specifically includes institutions such as hospitals, nursing homes and the Medical Society. Sections 2 - 4 clarify that Delaware has one hotline for all reports of abuse against children located within the Department of Services for Children, Youth and Their Families, and adds a requirement that the Delaware Department of Justice be notified of criminal activity. Section 5 obligates the department to inform the Division of Professional Regulation if child abuse or neglect allegations are made against a regulated professional. Section 6 increases the potential civil penalties for persons or entities who fail to report child abuse notwithstanding an obligation to do so. Sections 7 and 8 allow the Department of Health and Social Services to discipline hospitals and nursing facilities licensed by the Department if they fail to make mandatory reports of child abuse under Title 16 or unprofessional conduct by physicians under the Medical Practice Act. Finally, section 9 creates an affirmative duty for physicians to inform the Board of Medical Practice if allegations of child abuse or neglect are made to the Department of Services for Children, Youth and Their Families or would cause them to be listed on the Adult Abuse Registry.

He clarified that the state already has mandatory reporting but believes this legislation just clarifies this mandate. He referred to Mike Barlow, Attorney for the Office of the Governor, to further detail the bill.

Mr. Barlow stated that there are two main themes highlighted in the legislation. The first theme included promoting communication across departments. The Bradley investigation has shown that vital pieces of information from previous investigations and reports have been lost through transactions. This legislation will hopefully promote more efficient communication. The legislation also provides the right incentives for people to report allegations. The legislation now applies to all persons and institutions and organizations and also increases the fine structure for the failure to report. Currently, the first violation for the failure to report child abuse or neglect is \$5,000. The legislation increases this first fine to \$10,000.

In regard to line 30 in section 9 of the legislation, Rep. Babieri questioned why a 30-day requirement was established. Mr. Barlow stated that this 30-day period aligned with all other current policies and reporting duties. He clarified that this 30-day requirement is related to self reporting. In the case of a report being filed against a physician, the physician has 30 days to come forward to the board and address the issue.

Rep. Scott questioned how this legislation would affect school employees and school districts. He asked if the legislation would incur any new responsibilities on the school district.

Mr. Barlow responded that teachers and nurses are currently obligated to report any signs of child abuse or neglect. The legislation does expand this obligation to school districts but a new mechanism or process to do so is not required.

Rep. Scott asked if a teacher fails to report, is the school district subject to any penalties or fines. Mr. Barlow responded that the legislation broadens the obligation to report from all persons to include all entities as well. With this definition, he believes that the individual teacher and the school district could be fined. However, the hope is that because the entity can now be liable, it would have more incentive to report an incident.

Rep. Schooley suggested adding therapists, clergy men, and possibly day care administrators to the list of persons obligated to report allegations. Mr. Barlow stated that the law indicates all persons are obligated to report, so those professions are already included.

In regards to the school district issue, Rep. Scott voiced the need for the board to communicate with the Department of Education and school districts around the state to clearly detail the reporting obligations required in the bill. Collaboration with the DOE. would ensure that school districts have appropriate communication processes established. Mr. Barlow stated they would work with DOE.

Rep. Barbieri asked if the division could handle this legislation. Mr. Collins responded that they have to. He stated that the division has already had an increase in the number of cases reported but that they have hired an additional two investigators.

All members of the committee voiced their concern for the increased number of cases being reported and the fear that many of these cases would not be acted on. Mr. Barlow and Mr. Collins understood their concern.

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

Rep. Barbieri introduced **SB 298, AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE IMPOSITION OF FINES BY THE BOARD OF MEDICAL PRACTICE**. He stated that this act increases the incentive for persons with a mandatory reporting obligation under the Medical Practice Act to comply with their obligation under that act. Sections 1 and 2 of the bill give the Board of Medical Practice additional flexibility to impose appropriate fines by increasing the range of fines from a maximum of \$5,000 to a maximum of \$10,000 for a first violation and \$50,000 for a subsequent violation. Sections 2 - 6 of the bill address the problem identified by the Department of Justice that the Board of Medical Practice lacks power to regulate individuals or entities not engaged in the practice of medicine. These sections supplement the board's enforcement powers by granting the board the authority to enforce fines against non-licensees who have a duty to report to the board on the same terms as licensees.

Mr. Barlow stated that he spoke a little about the fine structures with the previous bill. He clarified that those fines were with child abuse cases and that this legislation addressed unprofessional conduct. He stated that the fine penalties were similar between the two bills.

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

Michael Green, a member of the public, asked to speak to the committee. He stated that as a prior public member of the Board of Medical Practice from 2002 through 2005, the son of a cardiologist, and a former chemist, he understands the urgency and complexity of these issues. While he supported the intentions of all the legislation discussed, he urged the committee to try and understand how and why incidents like those in the Dr. Bradley case occur. He stressed that incidents like that are not isolated.

Mr. Green believes that the committee should address why physicians may act out. He believed this cause was stress. He stated that physicians are not immune to psychosocial problems but may face unique impediments to attending to them. Self-care among physicians is not a topic generally included in part of professional training, nor is it a topic that readily receives consideration in professional practice. Mr. Green believes that the stresses of professional practice can exact a great toll which can lead to tragic consequences. For example, there is a higher prevalence of psychiatric disorders among physicians than in the general population. Some 30 to 70 percent of all people who attempt suicide apparently have an affective disorder, a substance-use-related disorder, or schizophrenia. Evidence further suggests that drug abuse and alcoholism are often associated with suicides of physicians. He concluded that female physicians, in particular, have been shown to have a higher frequency of alcoholism than women in the general public. Drug abuse is also related to specialty, being that particularly prevalent among psychiatrists, anesthesiologists, and emergency physicians.

Mr. Green believes there were three key aspects of the Board of Medical Practice that should be addressed. First, he stated that hospitals need to have a higher responsibility in reporting incidents. He believed hospitals know about problems but don't want to voice the issue because they know it will hurt the reputation of the hospital. Second, Mr. Green thinks the education of physicians should be altered to address self care. And lastly, Mr. Green believes that public members of the Board of Medical Practice should have a science background or education in the medical field. Currently, Title 24, Section 1710B of the code states that no public member can be certified, licensed, or registered in any health field or have a spouse or family member that is. Mr. Green believes that the concept of "group think" along with this current requirement is a way for the physicians to protect themselves. He believes having educated public members could hold doctors more accountable on the board.

Mr. Green thanked the committee for their time and efforts and provided the committee with additional reports and a PowerPoint regarding the issue. The information is attached.

Rep. Barbieri and the committee thanked Mr. Green for his comments. Rep. Barbieri adjourned the meeting at 1:47 p.m.

Respectfully submitted by,

Amy Clark