

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Officers, Directors and Board Members of Medical Malpractice Insurers

Proposed New Rule: N.J.A.C. 11:27-8

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:30D-18 and 17:30D-31.

Calendar Reference: See Summary below for explanation of exceptions to calendar requirement.

Proposal Number: PRN 2005-33

Submit comments by March 19, 2005 to:

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The agency proposal follows:

Summary

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004 c. 17, (the Act), approved June 7, 2004, represents the Legislature's response to a medical malpractice liability insurance crisis in this State. The crisis created an affordability problem for physicians who indicated that escalating premiums directly caused some of them to leave New Jersey to practice elsewhere, scale back their practices or retire from the practice of medicine altogether. The Act was designed to address this affordability problem by reforming three primary components of the medical malpractice system: comprehensive tort reform; changes to

New Jersey's health care system; and tightening the regulation of medical malpractice insurers. Section 13 of the Act, codified as N.J.S.A. 17:30D-18, prohibits persons serving as an officer, director or board member of a professional association for health care providers from serving concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that is licensed in New Jersey and offering medical malpractice liability insurance policies after the effective date of the Act. The Department is proposing this new rule at N.J.A.C. 11:27-8 to implement that section of the Act.

For purposes of the section, a health care provider is defined as "an individual or entity which, acting within the scope of its licensure or certification, provides health care services and includes, but is not limited to, a physician, dentist, nurse or other health care professional who is regulated pursuant to Title 45 of the Revised Statutes and a health care facility licensed pursuant to N.J.S.A. 26:2H-1 et seq." The section also provides for a civil penalty of \$10,000 for each violation of the section for a person or professional association who violates the provisions of the section.

A 60-day comment period is provided on this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The Department believes that New Jersey consumers, malpractice insurers and healthcare providers will be positively affected by the elimination of any conflict of interest or any implication of impropriety effectuated by these rules and, to that end, the proposed rule further promotes strong and independent corporate governance amongst New Jersey's medical malpractice carriers. This strong corporate governance should benefit the entire marketplace, as

it will enhance the public's confidence in, and the financial stability of our medical malpractice carriers.

Economic Impact

The Department believes that the proposed rule will have some negative economic effect on those who will no longer be able to serve in both capacities concurrently. These losses will vary according to the amount of the remuneration received by the professionals. There should be little or no economic impact on the organizations currently employing these professionals. The organizations should be able to replace these individuals with others at comparable costs. The Department believes that any negative effects on the affected individuals are far outweighed by positive social impact resulting from the elimination of any real or implied conflicts of interests.

Further, the Department believes that there could be a positive economic impact on consumers and purchasers of medical malpractice insurance as a result of the elimination of any real or implied conflicts of interest and any increased costs of medical malpractice liability insurance attributable to those conflicts. Therefore, the Department believes that any adverse economic impact to any of these professionals will be outweighed by the benefits to New Jersey consumers, the medical malpractice insurers and insured physicians.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule is not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rule. The only anticipated change in jobs will be the decrease in the number of individuals holding more than one position, while the number of positions should remain constant.

The Department invites commenters to submit data or studies concerning the job impact of the proposed rule together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because some professional associations for health care providers may employ fewer than 100 full-time employees and, therefore, are “small businesses” as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rule contains no reporting or recordkeeping requirements. The new compliance requirement will affect all health care associations regardless of size. See the Summary above for a discussion of the compliance requirements and see the Economic Impact above for a discussion on the costs of these requirements. No professional services will need to be employed in order to comply with the proposed new rule.

The proposed new rule provide no different compliance requirements specifically based on business size. Providing different compliance requirements based on business size would thwart the intent of the Legislature as expressed in the Act.

Smart Growth Impact

The proposed new rule has no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows:

SUBCHAPTER 8. OFFICERS, DIRECTORS AND BOARD MEMBERS OF MEDICAL MALPRACTICE INSURERS

11:27-8.1 Prohibition upon concurrently serving in dual capacity

(a) No person who is an officer, director or board member of a professional association for health care providers shall serve concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that is licensed in New Jersey and offering medical malpractice liability insurance policies.

(b) For the purposes of this section only, a health care provider means an individual or entity which, acting within the scope of its licensure or certification, provides health care services, and includes, but is not limited to, a physician, dentist, nurse or other health care professional whose professional practice is regulated pursuant to Title 45 of the Revised Statutes and a health care facility licensed pursuant to N.J.S.A. 26:2H-1 et seq.

(c) A person or professional association who violates the provisions of this section and/or N.J.S.A. 17:30D-18 shall be liable for a civil penalty of \$10,000 for each violation.

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