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POMA



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2002 MAY 28 AM 11:37 May 24, 2002

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*A divisional society of the American
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Daniel D. Dowd, Jr., D.O., Chairman
State Board of Osteopathic Medicine
P.O. Box 2649
Harrisburg, PA 17105

Dear Dr. Dowd:

We have been informed that the State Board of Osteopathic Medicine has voted to increase the bi-annual license fee for osteopathic physicians from the present \$140 to \$440, effective November 1, 2002, which is the renewal license date. This vote, we understand, was taken without advance notice, public discussion or disclosure as to how the additional funds will be used.

We request that the license fee increase be placed on the June 12, 2002 agenda for discussion and reconsideration by the Board. At that time, public disclosure should be made as to:

- The amount of revenue expected to be generated by the fee increase;
- A budget detailing exactly how the proposed additional revenue generated by the fee increase will be expended; and
- Express assurance to the profession and the public that any additional funds generated by this fee increase will be used only for activities of and directly related to the functions of the Board and will not be diverted for any other purposes or end up as a disguised tax increase on osteopathic physicians.

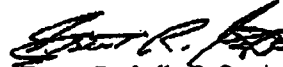
We also request that the Board publicly discuss alternatives to a fee increase or ways in which the size of the proposed fee increase can be reduced.

This is a time of increasing financial pressure on physicians. Reimbursement rates are being cut or not being increased to meet the rate of healthcare inflation. Only with the most urgent of justifications, clearly and publicly articulated, can the Board justify any increase in fees let alone an increase of 314%. We call upon the Board, in open, public session, to clearly articulate its justification for such a fee increase and to do everything in its power to reduce or eliminate the need for any fee increase.

We very much appreciate your consideration of our request.

If you have any questions, please contact us.

Sincerely,


Ernest R. Gelb, D.O.
President

ERG/dll

c: SBOM Members
POMA Board of Trustees

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1330 EISENHOWER BOULEVARD, HARRISBURG, PA 17111-2395
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ORIGINAL: 2274

PHYSICIAN LICENSING DIVISION
REVIEW COMMISSION

Date: 5/28/2002

From: Mario Lanni

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Please Transmit the Following Pages to:

Name: Kim

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Total Number of Pages: 2 (Including cover sheet)

FAX Number: 783-2664

Note: Per your request, attached is the letter from POMA regarding the osteopathic license fee increase.

Thank you - Donna Lawson for Mario Lanni

If all pages are not received, please contact POMA at the telephone numbers above.

"Osteopathic physicians...working to make a difference"

POMA



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RECEIVED FOR REVIEW COMMISSION June 5, 2002

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*A Divisional Society of the American
Osteopathic Association*

Mr. David M. Williams, Acting Commissioner
Bureau of Professional and Occupational Affairs
P.O. Box 2649
Harrisburg, PA 17105-2649

Re: Proposed Increase In Biennial Registration Fees By The State Board of
Osteopathic Medicine

Dear Acting Commissioner Williams:

I am in receipt of your letter dated May 30, 2002 in response to my letter to Dr. Dowd, Chairman of the State Board of Osteopathic Medicine.

Your response raised serious questions concerning the proposed increase in biennial licensure fees of osteopathic physicians by 314%. Our concerns are as follows:

- ▶ The method by which the fee increase was adopted appears to violate the Sunshine Act;
- ▶ The proposed fee increase appears to (a) cause Osteopathic physicians to pay more than their proportionate share of the additional needed resources; and (b) result in raising significant surplus revenues beyond what you say is needed; and
- ▶ The authority of the State Board of Osteopathic Medicine to raise physician biennial licensure fees to implement legislation other than the Osteopathic Medical Practice Act.

We renew our request for the State Board of Osteopathic Medicine to consider the fee increase at a duly convened public meeting, to publicly disclose all data supporting the proposed fee increase and to publicly vote on any fee increase in accordance with applicable Pennsylvania law.

Discussion

1. Potential Violation of the Sunshine Act.

In your letter you state that "[a]t its May 8, 2002 meeting, the Board reviewed a summary of its revenues and expenses. . . ." Page 2. On page 3, you stated "I also appreciate your concern that discussion of the regulation was limited, however, the Board members were conversant with the information provided above."

Mr. David M. Williams

Page 2 of 4

June 5, 2002

POMA's Executive Director, Mario E. J. Lanni, was present at the Board's May 8 meeting. Mr. Lanni reported to me that the Board did not review a summary of its revenues and expenditures at the public meeting. To the contrary, there was no discussion at all after the Board's private session. The Board's consideration of its revenues and expenses and the Board's familiarity with such information was obviously a result of discussions at the private/executive session. Such a course of conduct, out of the public view, is exactly the type of action the Sunshine Act was enacted to prevent.

The purpose of the Sunshine Act is to allow Commonwealth citizens to receive notice of and to attend all meetings of agencies in which "agency business" is discussed. 65 Pa.C.S. § 702(b). "Agency business" is defined as "[t]he framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action." 65 Pa.C.S. § 703. Under Section 13.1 of the Osteopathic Medical Practice Act, "[a]ll fees required pursuant to this act shall be fixed by the board by regulation. . . ."

There are limited situations in which an agency may conduct discussions that are not open to the public. For example, under 65 Pa.C.S. § 707, agencies are "authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference." My understanding is that the private meeting that the Board held on May 8 was called an "executive session" and not a conference. However, even if it were a "conference", it is obvious from your letter and the Board's subsequent action in the public session that the Board "deliberated" the matter in private, action that is not permitted under the Sunshine Act.

Executive sessions are permitted under certain, very limited circumstances. The six enumerated reasons for an executive session are set forth in 65 Pa.C.S. § 708(a)(1)-(6). Consideration by the Board of fiscal projections and the factual basis for and the necessity of a 314% fee increase does not fall within those enumerated situations.

At the very least, the facts as set forth in your letter give the appearance of a deliberate attempt to avoid public disclosure of the facts that form the basis for a fee increase. As discussed in the next section, the course of action has given rise to significant questions about the fairness and justification for the fee increase adopted. Perhaps this could all have been avoided if the review and consideration of budget information had taken place at the public session.

We have discussed this matter with our legal counsel, who has advised us that, if this matter is litigated, the Commonwealth Court should hold that the vote on May 8 was invalid as a violation of the Sunshine Act. *See*, 65 Pa.C.S. § 713.

The raising and expenditure of public funds is one of the most important tasks of government. That is the reason that the laws of Pennsylvania require that such actions be done in the full view of the public at an open and public meeting. We call upon the Board to fulfill its statutory obligation to the people of Pennsylvania and consider and vote upon any fee increase at an open and public meeting.

Mr. David M. Williams
Page 3 of 4
June 5, 2002

2. The proposed fee increase appears to (a) cause Osteopathic physicians to pay more than their proportionate share of the additional needed resources; and (b) result in raising significant surplus revenues beyond what you say is needed.

As noted above, there was no discussion of the justification for the 314% biennial fee increase at the Board's May 8 meeting. We do not understand the fiscal justification for the fee increase as detailed in your letter of May 30.

On page 2 of your May 30 letter, you detail that the Board requires "additional resources to fulfill its additional obligations under" the Mcare Act. You go on to state:

The additional operational resources and complement necessary to implement the MCARE [sic] Act are estimated to result in \$5,379,031 in increased costs per year between the State Board of Medicine and the State Board of Osteopathic Medicine.

Your letter does not discuss whether the full \$5,379,031 projected deficit will occur in FY 2003-2004 due to the necessity to increase staff over that fiscal year. This is critical to whether the full increase in fees is justified in order to fund additional costs in the biennial period beginning in FY 2003-2004.

With that said, the proposed fee increase for Osteopathic physicians appears to be excessive on a pro rata basis, which you state on page 2 of your letter is the justification for the proposed increase.

My understanding is that there are 5,500 physicians licensed by the State Board of Osteopathic Medicine and 55,000 physicians licensed by the State Board of Medicine. If those figures are accurate, then the increase in fees paid by Osteopathic physicians should raise 9.1% of the total fees required (5,500 divided by 60,500).

Since you estimate that the total annual deficit is \$5,379,031, the pro rata fee increase for Osteopathic physicians should yield \$489,491.82 in additional annual revenues. However, the proposed fee increase yields a total of \$825,000 per year in additional revenues.¹

Why are Osteopathic physicians being charged more than their pro rata share of increased costs? How will the additional funds be used? As discussed below, it is important to note that Section 13.1 of the Osteopathic Medical Practice Act specifically requires fees raised by the Board only to be used by the Board in carrying out the provisions of the Osteopathic Medical Practice Act.

3. The authority of the State Board of Osteopathic Medicine to raise physician biennial licensure fees to implement legislation other than the Osteopathic Medical Practice Act.

¹ A \$300 per physician increase times 5,500 Osteopathic physicians yields \$1,650,000 for the 2 year period or \$825,000 per year.

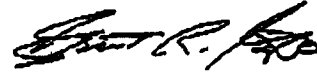
Mr. David M. Williams
Page 4 of 4
June 5, 2002

We do not understand the legal basis for the fee increase. Section 13.1(c) of the Osteopathic Medical Practice Act requires all fees raised by the Board are to be ". . .for the exclusive use by the board in carrying out the provisions of this act. . . ." The words "this act", of course, refer to the Osteopathic Medical Practice Act.

We understand that the Mcare Act imposes additional duties on the Board; however, from the clear language of the Osteopathic Medical Practice Act, we do not understand the legal authority for the Board increasing fees and using such fees generated under the Osteopathic Medical Practice to comply with the requirements of the Mcare Act. Under Article III, Section 6 of the Pennsylvania Constitution, the Mcare Act, of course, could not effectuate an amendment of the Osteopathic Medical Practice Act .

Representatives of POMA would be happy to meet with you to discuss these issues.

Sincerely,



Ernest R. Gelb, D.O.
President

ERG/dll

- c: Hon. Clarence D. Bell, Chairman, Committee on Consumer Protection & Professional Licensure
- Hon. Mario J. Civera, Jr., Chairman, Committee on Professional Licensure
- Hon. C. Michael Weaver, Acting Secretary of the Commonwealth
- Daniel D. Dowd, Jr. D.O., Chairman, State Board of Osteopathic Medicine
- Dr. Robert Muscalus, Physician General
- John T. Henderson, Esq., Chief Counsel, Department of State
- Jeff Cox, Legislative Liaison, Department of State
- State Board of Osteopathic Medicine Board Members
- Marlo E.J. Lanni, D.Sc., Executive Director
- Lawrence J. Beaser, Esq.

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In Pa. 1-800-544-POMA
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From: Mario Lanni

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Note: Attached is the most current POMA letter regarding the osteopathic license increase.

Thank you - Donna Lawson for Mario Lanni

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