

**SENATE CONCURRENT
RESOLUTION No. 140**

**STATE OF NEW JERSEY
214th LEGISLATURE**

INTRODUCED DECEMBER 20, 2010

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator JIM WHELAN

District 2 (Atlantic)

SYNOPSIS

Determines that Board of Medical Examiners proposed medicinal marijuana program rules are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 State Board of Medical Examiners proposed rules to implement
3 the “New Jersey Compassionate Use Medical Marijuana Act.”
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5 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
6 Constitution of the State of New Jersey, the Legislature may review
7 any rule or regulation adopted or proposed by an administrative
8 agency to determine if the rule or regulation is consistent with the
9 intent of the Legislature as expressed in the language of the statute
10 which the rule or regulation is intended to implement; and
11 **WHEREAS**, In 2010, the Legislature enacted the “New Jersey
12 Compassionate Use Medical Marijuana Act,” P.L.2009, c.307
13 (C.24:6I-1 et al.), as amended by P.L.2010, c.36 to extend the
14 effective date of the act from July 1, 2010 to October 1, 2010; and
15 **WHEREAS**, The Legislature expressed in the act its findings that
16 modern medical research has discovered beneficial uses for
17 marijuana in treating or alleviating pain and other symptoms
18 associated with certain debilitating medical conditions, that
19 compassion dictates that a distinction be made between medical and
20 non-medical uses of marijuana, and that patients who use marijuana
21 to alleviate suffering from debilitating medical conditions and their
22 physicians should be protected from arrest, prosecution, property
23 forfeiture, and criminal and other penalties; and
24 **WHEREAS**, Although the act has many strict limitations on the use of
25 marijuana, a patient clearly is permitted to use up to two ounces of
26 marijuana per month if a physician with whom the patient has a
27 bona fide relationship certifies that he has conducted a
28 comprehensive medical history and physical examination and
29 determines that the patient qualifies to receive marijuana; and
30 **WHEREAS**, On November 15, 2010, the State Board of Medical
31 Examiners (BME), in the Division of Consumer Affairs in the
32 Department of Law and Public Safety, proposed rules to implement
33 the “New Jersey Compassionate Use Medical Marijuana Act,”
34 which proposed rules were published in the New Jersey Register
35 (N.J.A.C. 13:35-7A et seq., PRN 2010-289); and
36 **WHEREAS**, The BME proposed rules, at N.J.A.C.13:35-7A.5(c)3,
37 would require physicians to periodically attempt to stop a sick or
38 dying patient’s medical use of marijuana, decrease the quantity
39 authorized, or try other drugs or treatment modalities, even though
40 no such requirement exists in the act; and
41 **WHEREAS**, Such a requirement would clearly add to the burden and
42 suffering of patients and runs counter to the intent to alleviate the
43 suffering of sick and dying patients; and
44 **WHEREAS**, The act permits minors to use medical marijuana as long as
45 the minor’s custodial parent, guardian, or person who has legal
46 custody of the minor consents in writing that the minor patient has
47 permission to use marijuana and that the parent, guardian, or person

1 who has legal custody will control the acquisition and possession of
2 the medical marijuana and any related paraphernalia from the
3 alternative treatment center; and

4 **WHEREAS**, Despite the fact that no such requirement exists in the act,
5 the BME proposed rules, at N.J.A.C.13:35-7A.4(c) would require
6 that a physician, who already has the requisite bona fide physician-
7 patient relationship with a minor patient, must also obtain written
8 confirmation from a pediatrician if the minor's physician is not a
9 pediatrician and, in all cases, from a psychiatrist, that the minor
10 patient is likely to receive therapeutic or palliative benefits from the
11 medical use of marijuana; such a requirement would clearly add to
12 the burden and suffering of minor patients; and

13 **WHEREAS**, The rules proposed by the BME are not consistent with the
14 "New Jersey Compassionate Use Medical Marijuana Act" and
15 would undermine the Legislature's intent to provide for a medical
16 marijuana program that provides relief to suffering patients; now,
17 therefore,

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19 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
20 General Assembly concurring):

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22 1. The Legislature declares that the proposed rules to
23 implement the "New Jersey Compassionate Use Medical Marijuana
24 Act," published by the State Board of Medical Examiners, in the
25 Division of Consumer Affairs in the Department of Law and Public
26 Safety, on November 15, 2010 in the New Jersey Register are not
27 consistent with the intent of the Legislature as expressed in the
28 language of "New Jersey Compassionate Use Medical Marijuana
29 Act," P.L.2009, c.307 (C.24:6I-1 et al.), as amended by P.L.2010,
30 c.36.

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32 2. Pursuant to Article V, Section IV, paragraph 6 of the
33 Constitution of the State of New Jersey, the State Board of Medical
34 Examiners, in the Division of Consumer Affairs in the Department
35 of Law and Public Safety, shall have 30 days following transmittal
36 of this resolution to amend or withdraw the proposed regulations or
37 the Legislature may, by passage of another concurrent resolution,
38 exercise its authority under the Constitution to invalidate the
39 regulations in whole or in part.

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41 3. The Secretary of the Senate and the Clerk of the General
42 Assembly shall transmit a duly authenticated copy of this
43 concurrent resolution to the Governor, the Attorney General, the
44 Director of the Division of Consumer Affairs, and the Executive
45 Director of the State Board of Medical Examiners.

STATEMENT

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This concurrent resolution embodies the finding of the Legislature that the rules proposed by the State Board of Medical Examiners (BME), in the Division of Consumer Affairs in the Department of Law and Public Safety, to implement the “New Jersey Compassionate Use Medical Marijuana Act,” P.L.2009, c.307 (C.24:6I-1 et al.), as amended by P.L.2010, c.36, are not consistent with the intent of the Legislature as expressed in the language of the act.

The proposed rules would require physicians to periodically attempt to stop a patient’s medical use of marijuana or decrease the quantity authorized, or try other drugs or treatment modalities. This requirement appears nowhere in the act, and is contrary to the Legislature’s intent to provide relief for suffering patients.

In addition, the proposed rules would require that a minor’s physician, who already has the bona fide physician-patient relationship with the minor required under the act, seek additional confirmation from a pediatrician (if the minor’s physician is not a pediatrician) and, in all cases, from a psychiatrist, that the minor patient is likely to receive therapeutic or palliative benefits from the medical use of marijuana.

These two requirements proposed by the BME clearly impose additional burdens on patients and their physicians, and contradict the Legislature’s intent as expressed in the “New Jersey Compassionate Use Medical Marijuana Act.”

The resolution provides that the Executive Director of the BME will have 30 days from the date of transmittal of this resolution to amend or withdraw the proposed rules and regulations, or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the rules and regulations in whole or in part.