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.
A CONCURRENT RESOLUTION concerning legislative review of
State Board of Medical Examiners proposed rules to implement
the “New Jersey Compassionate Use Medical Marijuana Act.”

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the
Constitution of the State of New Jersey, the Legislature may review
any rule or regulation adopted or proposed by an administrative
agency to determine if the rule or regulation is consistent with the
intent of the Legislature as expressed in the language of the statute
which the rule or regulation is intended to implement; and

WHEREAS, In 2010, the Legislature enacted 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 to extend the
effective date of the act from July 1, 2010 to October 1, 2010; and

WHEREAS, The Legislature expressed in the act its findings that
modern medical research has discovered beneficial uses for
marijuana in treating or alleviating pain and other symptoms
associated with certain debilitating medical conditions, that
compassion dictates that a distinction be made between medical and
non-medical uses of marijuana, and that patients who use marijuana
to alleviate suffering from debilitating medical conditions and their
physicians should be protected from arrest, prosecution, property
forfeiture, and criminal and other penalties; and

WHEREAS, Although the act has many strict limitations on the use of
marijuana, a patient clearly is permitted to use up to two ounces of
marijuana per month if a physician with whom the patient has a
bona fide relationship certifies that he has conducted a
comprehensive medical history and physical examination and
determines that the patient qualifies to receive marijuana; and

WHEREAS, On November 15, 2010, the State Board of Medical
Examiners (BME), in the Division of Consumer Affairs in the
Department of Law and Public Safety, proposed rules to implement
the “New Jersey Compassionate Use Medical Marijuana Act,”
which proposed rules were published in the New Jersey Register
(N.J.A.C. 13:35-7A et seq., PRN 2010-289); and

WHEREAS, The BME proposed rules, at N.J.A.C.13:35-7A.5(c),
would require physicians to periodically attempt to stop a sick or
dying patient’s medical use of marijuana, decrease the quantity
authorized, or try other drugs or treatment modalities, even though
no such requirement exists in the act; and

WHEREAS, Such a requirement would clearly add to the burden and
suffering of patients and runs counter to the intent to alleviate the
suffering of sick and dying patients; and

WHEREAS, The act permits minors to use medical marijuana as long as
the minor’s custodial parent, guardian, or person who has legal
custody of the minor consents in writing that the minor patient has
permission to use marijuana and that the parent, guardian, or person
who has legal custody will control the acquisition and possession of the medical marijuana and any related paraphernalia from the alternative treatment center; and

WHEREAS, Despite the fact that no such requirement exists in the act, the BME proposed rules, at N.J.A.C.13:35-7A.4(c) would require that a physician, who already has the requisite bona fide physician-patient relationship with a minor patient, must also obtain written 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; such a requirement would clearly add to the burden and suffering of minor patients; and

WHEREAS, The rules proposed by the BME are not consistent with the “New Jersey Compassionate Use Medical Marijuana Act” and would undermine the Legislature’s intent to provide for a medical marijuana program that provides relief to suffering patients; now, therefore,

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

1. The Legislature declares that the proposed rules to implement the “New Jersey Compassionate Use Medical Marijuana Act,” published by the State Board of Medical Examiners, in the Division of Consumer Affairs in the Department of Law and Public Safety, on November 15, 2010 in the New Jersey Register are not consistent with the intent of the Legislature as expressed in the language of “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.

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

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