

## **MINUTES OF COMMISSION MEETING**

**September 19, 2013**

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Commissioner Andrew Bunn, Commissioner Albert Burstein, and Commissioner Virginia Long. Professor Bernard Bell, of Rutgers School of Law, attended on behalf of Commissioner John J. Farmer, Jr.; Professor Ahmed I. Bulbulia, of Seton Hall Law School, attended on behalf of Commissioner Patrick Hobbs; and Grace C. Bertone, of Bertone Piccini LLP, attended on behalf of Commissioner Rayman Solomon.

Ms. Paulina M. Grabczak, of the Princeton Public Affairs Group, was also in attendance.

### **Minutes**

The Minutes of the July meeting were approved on motion of Commissioner Bulbulia, seconded by Commissioner Long.

#### **Revised Uniform Law on Notarial Acts / New Jersey Notaries Act**

Jayne Johnson presented a Revised Tentative Report for review by the Commission but requested that the Commission defer formal release of the Report. Ms. Johnson explained that recently several entities expressed a desire to comment on the Report, including the Constitutional Officers Association of New Jersey (COANJ), particularly the County Clerks and County Surrogates sections, as well as the Land Title Association. Ms. Johnson explained that the COANJ members were attending their annual conference and, as a result, were unable to be present at this Commission meeting to provide comment on the Report. Support and interest for this project continues to grow, and more commentary is expected in the next few weeks. As a result, Ms. Johnson requested that the Commission allow further comment before formally releasing the Revised Tentative Report.

Ms. Johnson explained that the report is based on the Revised Uniform Law on Notarial Acts (RULONA) drafted by the Uniform Law Commission (ULC). Three states have adopted RULONA, North Dakota, Iowa, and Oregon, and it was introduced this year in the Pennsylvania legislature. Ms. Johnson said that the Report also includes modifications incorporating legislative proposals, as well as provisions reflecting New Jersey practice.

Ms. Johnson referred to the formal comments on the project provided to the Commission, and highlighted one issue raised in the comments regarding the regulation of fees for notary services. Ms. Johnson requested guidance from the Commission to

determine whether fees charged for notary services should be addressed in the Report, particularly because the Report includes new education requirements that increase the costs expended by notaries public during the notary application and renewal process. Commissioner Andrew Bunn recommended that there be an acknowledgement of this issue in the report to the effect of, “[I]n light of this, the Commission recommends the Legislature consider an increase in fee.” Commissioner Bunn added that the Report should consider an adjustment, but should not overstep the boundary of making a determination on what is, essentially, a policy issue.

John Cannel noted that the Report altered the current process of becoming a notary public in New Jersey. In particular, the current law requires a notary public applicant to obtain a recommendation from a New Jersey legislator. Mr. Cannel asked whether this portion of the statute should be changed. Commissioner Bunn recommended that the statutory language remain as it is in the current statute. He added that the Report should, however, include a notation in the Comments section that the application process suggested by the uniform law is being modified by this Report in deference to a long standing New Jersey practice. Commissioner Long added that doing so will reserve judgment on this issue for the Legislature.

Commissioner Burstein then asked whether the phrase “adjoining state” in *N.J.S. 52:7-13* of the current statute should be left in the proposed legislation (*N.J.S. 52:7A-5* of the Report). Commissioner Bernard Bell said, regarding that same section, that there may be a constitutional issue regarding differentiating the standards for resident and nonresident notaries public. It was also suggested that it may be inappropriate to allow the revocation of the authorization of an individual to act as a notary without cause at the pleasure of the Secretary of State. The Commissioners agreed these issues should be explored further.

The Commission concluded the discussion regarding the Revised Uniform Law on Notarial Acts and determined that no further Commission action was necessary at this time.

### **New Jersey AIDS Assistance Act**

Vito Petitti presented a Memorandum concerning the New Jersey AIDS Assistance Act, (“NJAAA”), *N.J.S. 26:5C-1 et seq.*, which requires the reporting and establishes the standards for maintaining confidentiality in AIDS and HIV cases. Mr. Petitti stated that the Memorandum focuses on the varying standards for determining when disclosure of medical records is permitted under *N.J.S. 26:5C-9a.* and b. Subsection a. provides that:

[t]he record of a person who has or is suspected of having AIDS or HIV infection may be disclosed by an order of a court of competent jurisdiction which is granted pursuant to an application showing good cause therefor. At a good cause hearing the court shall weigh the public interest and need for disclosure against the injury to the person who is the subject of the record, to the physician-patient relationship, and to the services offered by the program. Upon the granting of the order, the court, in determining the extent to which a disclosure of all or any part of a record is necessary, shall impose appropriate safeguards to prevent an unauthorized disclosure.

While subsection b. states that:

[a] court may authorize disclosure of a person's record for the purpose of conducting an investigation of or a prosecution for a crime of which the person is suspected, only if the crime is a first degree crime and there is a reasonable likelihood that the record in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

Mr. Petitti explained that in *State of New Jersey v. C.M.*, the Appellate Division upheld the trial court's ruling under *N.J.S. 26:5C-9* subsection a., denying the prosecutor's application seeking an HIV-positive defendant's medical records in support of third degree charges of "a diseased person committing an act of sexual penetration." The Court reasoned that the legislative intent of the statute indicated that subsection a. was not intended to apply to criminal prosecutions and as a result the prosecutor failed to satisfy the standard established in subsection a. Consequently, in *State of New Jersey v. C.M.*, prosecutors were barred from obtaining the records under either subsection a. or b. of *N.J.S. 26:5C-9* because the third degree offenses charged failed to satisfy the first degree crimes prong required in subsection b.

Resolving the issue might have been possible by adding language to *N.J.S. 26:5C-9*, but Mr. Petitti pointed out that, subsequent to the filing of this Memorandum, Assemblyman Jack Ciattarelli (R-16) and Senator Christopher Bateman (R-16) proposed for introduction Bills A-4380 and S-2979, respectively, which appear to address the issue. Mr. Petitti recommended that, in light of these developments, the Commission take no action at this time.

Ms. Tharney explained that Mr. Petitti had reached out to Assemblyman Ciattarelli's office in an effort to confirm that the bill proposed for introduction covered the same issue as that identified in the Commission Memorandum. She said that the Assemblyman's Staff graciously did so, and Mr. Petitti added that he expressed his appreciation to Assemblyman Ciattarelli's office on behalf of the Commission.

The Commission determined that, in light of the pending legislation, no Commission action would be taken on this proposed project at this time.

### **Special Election Clause**

Jordan Goldberg began by introducing the proposed new project, which resulted from Staff's monitoring of case law and based on a recent decision by the Appellate Division. The project proposes modification of N.J.S. 40A:4-45.14 in response to the decision in *Roseff et al. v Byram Township et al.*, 2013 WL 3849886 at \*8 (App. Div. July 10, 2013) to eliminate language characterized as having "no discernible meaning" by the Appellate Division.

In *Roseff*, a case which addressed the issue of whether local budgets could be subject to municipal referenda, the Appellate Division analyzed the local municipal budget cap law, but also dedicated a portion of its opinion to a related paragraph that provides exception to the cap. The court concluded that the related paragraph was not related to the issue in the case, but noted that some of the language in that paragraph no longer retained any meaning, due to amendments to the municipal budget cap statute.

Ms. Goldberg said that this project would seem to fit within the Commission's mandate because it would eliminate obsolete legislative language that could cause confusion. She added that the project should be fairly modest in scope, and that while the Commission occasionally does larger projects to address many anachronistic or obsolete terms together, this could be a stand-alone short Report.

Commissioner Bunn said that this is exactly the type of project that is consistent with the Commission's mission, and several Commissioners commented that this area of the New Jersey statutes might be ripe for other projects, but that this would be a good start. The Commission unanimously determined that Staff should move forward with the project.

### **Mortgage Recording**

John Cannel explained that document before the Commission was a Draft Final Report, and that Staff was seeking authorization to release it as a Final Report.

Commissioner Burstein commented that the prefatory and introductory language was clear, lucidly written, and provided a good explanation of the context and history of the project. He had one suggestion for an amendment on page 5, in the comment, to fix a missing period. After discussion, several Commissioners also agreed that, on page 4, in the second paragraph, there was a "clunky" sentence that included the language "with difficulty." It was generally agreed that the language in question could be fixed easily,

and Commissioner Bunn suggested replacing the language with “There are difficulties,” which all agreed was appropriate.

Professor Bell made a motion to release the document as a Final Report, with the amendments discussed, and the motion was seconded by Commissioner Long and unanimously agreed to by the Commission.

### **New Jersey Volunteer Health Practitioners Act**

Laura Tharney began by explaining that the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) was drafted by the Uniform Law Commission in an expedited manner after hurricanes Katrina and Rita struck within weeks of each other in 2005. One of the major objectives of the Act is to make volunteer health practitioners, individuals who are licensed health care practitioners in good standing in their home state, available for rapid deployment. The goal of the act is to enable these individuals who are willing to provide emergency services in the stricken state or states to do so in response to emergency declarations without awaiting affirmative action on the part of host states, while allowing those host states control over the volunteer health practitioners within their borders. Ms. Tharney explained that the Commission has systematically addressed the various components of the Act since work began in 2009 and that there were seven specific points to which she wanted to direct the Commission’s attention at the meeting with the hope that work on this project can be concluded and a Final Report released.

In Section 2, subsection. n., on page 7, “health facility” and “health practitioner” are defined as including both human and animal services. “Health services,” however, is tailored to include only services provided to human recipients. A commenter suggested including a reference to animals in this section, but the “veterinary services” definition seems to cover the provision of care to animals. Instead, additional language was added to the definition of “veterinary services” in an effort to make it mirror, as closely and appropriately as possible, the scope of services included in the “health services” definition. The Commission did not object to the language as it appeared in the draft.

Throughout the act, references to Board of Pharmacy and State Board of Mortuary Science were added to the list when other boards with responsibilities under the Act were mentioned. There was no objection to these additions.

In Section 5, on page 12, there was no change to the statutory text, but language was added to the comment stating that

Commenters expressed practical concerns about how the Act would be implemented - concerns that volunteers, upon their arrival in the State, will not know where to go, what to do or who is in charge in any given situation. The

Commission acknowledges those concerns, but suggests that the development of any specific disaster response plan is beyond the scope of this Act and that, pursuant to the terms of the Act, volunteers must work through host entities, which are required to coordinate with the Department of Health.

There was no Commission objection to this language.

In Section 6, subsection b., on page 13, a question arose regarding the license. The Commission had previously expressed concern over the use of the word “license” in the subsection b. because the wording could imply that the revocation or suspension of any license would bar a volunteer, even if the license suspended was not related to the volunteering, such as a driver’s license. The limiting phrase “as defined by this Act” was therefore added since “license” is defined by this Act to mean “authorization by a state to engage in health or veterinary services.” The Commission did not object to this change, but Commissioner Bunn said that the language of Section 6, subsection b. appears to revoke the protections of the Act if a license is suspended or limited. He added that it might be appropriate to tailor it so that the protection of the Act was available so long as the volunteer was acting within the scope of their license and permitted practice. If, for example, a person is not allowed to treat children, he should still receive the benefit of the act for performing permitted actions. Commissioner Bunn said that if a practitioner has a good license and an invalid or lapsed one, he or she should be protected to the extent of the valid license since the goal of the Act is to encourage people to volunteer. Commissioner Long joined the discussion, agreeing with Commissioner Bunn. Commissioner Bunn added that, if the volunteer is doing what he or she is permitted to do, he or she is entitled to the protection of the Act to the extent of the contours of the license. Commissioner Long suggested taking out the negative language and framing the subsection positively, perhaps by stating that the volunteer health practitioner “shall be entitled to the protection of the Act to the extent that...” Ms. Tharney said that Staff would make this change and revise the language in accordance with the direction provided by the Commission.

In Section 10, on page 18, Ms. Tharney pointed out that the language of the draft has been returned to that found in the previous version of the draft that made reference to the Office of Emergency Management. In this Section, the Uniform Act makes reference to “the entity established to coordinate the implementation of the Emergency Management Assistance Compact.” In New Jersey, the OEM coordinates health emergencies. *See N.J.S. 26:13-3*, so the prior Report made specific reference to the OEM. Since it was not clear to Staff that the OEM is vested with exclusive jurisdiction for coordinating implementation of the EMAC in New Jersey, the draft statutory language was initially broadened. The comment to this section now explains, however, that a review of the Commission’s earlier consideration of this issue revealed that the Department of Health had raised a concern that there could be conflicting rules or

directives issued by different governmental entities. Since each group has sovereign power over the groups they oversee, various regulations could result and one entity could foreseeably promulgate a regulation that intruded into another entity's jurisdiction. Since this statute is only relevant in an emergency situation, the Commission determined that identifying the DoH or the OEM as the regulatory body in charge of coordinating government response to the emergencies addressed by the UEVHPA would be most appropriate. A benefit of having either of those entities coordinate is that they have fulltime operations. It was further determined that the centralized implementing body should be the agency promulgating regulations after consultation with other agencies having an interest. The language of the Report was returned to its previous form, reflecting the determination of the Commission. The Commission did not object to this modification of the language.

In Section 11, subsections a., b., and c., on page 19, Ms. Tharney explained that Staff was not aware, at the time the language of this section was considered by the Commission, that there was a New Jersey Veterinary Good Samaritan Law, in addition to the Good Samaritan Act (applicable to people). This section of the Report now combines part of Section 11 of the Uniform Act with a reference to New Jersey's Good Samaritan Act, *N.J.S. 2A:62A-1 et seq.* and *N.J.S. 45:16-9.10 et seq.* the "New Jersey Veterinary Good Samaritan Law," in order to afford the same limitation on liability provided under the GSA or the VGSL to the emergency volunteers. The Act does not change the provisions of the GSA or the VGSL, it simply incorporates them by reference. Both laws are referenced in this section because, while they are similar, the provisions of the two are not identical. It is anticipated that professionals in each of the health care areas are familiar with the provisions of the law that currently apply to them, so an effort was made to maintain the status quo in that regard. The Commission did not object to this addition.

Finally, in Section 12, subsection b.(2), on page 21, the Commission had carefully considered the issue at prior meetings and elected to draft the provision so that workers' compensation coverage is available to a volunteer if the volunteer does not have access to other coverage for the injury or death. This language, as initially drafted, included a reference to a "private" insurance plan and Ms. Tharney explained that the word "private" was removed to avoid confusion in a case in which an individual who may be covered by an insurance plan provided through a public employer, for example, is not deemed to be an employee of the State of New Jersey. The Commission did not object to this change. Commissioner Bell then asked whether the "or" in that subsection (between subsections b.(1) and b.(2), should be changed to "and," and the Commission agreed that this was an important correction to the language.

After the Commission concluded its discussion of the appropriate language for the changes requested in Section 6, Commissioner Bulbulia moved the release of the Final

Report as amended, and the motion was seconded by Commissioner Long and unanimously agreed upon by the Commission.

### **Miscellaneous**

The meeting was adjourned after a motion by Commissioner Bell, seconded by Commissioner Bulbulia. The next meeting of the Commission is scheduled for October 17, 2013.