



JAMES L. MADARA, MD
EXECUTIVE VICE PRESIDENT, CEO

ama-assn.org
t (312) 464-5000

September 13, 2018

The Honorable Louis D. Greenwald
Majority Leader
New Jersey Assembly
1101 Laurel Oak Rd., Suite 150
Voorhees, NJ 08043

Re: AMA Support for Assembly Bill 4273

Dear Assemblyman Greenwald:

On behalf of the American Medical Association (AMA) and our physician and student members, I am pleased to offer our support for Assembly Bill (AB) 4273. This legislation seeks to establish active state supervision of New Jersey professional licensing boards, in order to provide such boards state action immunity from federal antitrust laws.

The need for such supervision was made apparent in the Supreme Court's recent decision in *Federal Trade Commission v. North Carolina State Board of Dental Examiners (Dental Board)*, which held that when a controlling number of decision makers on a state licensing board are active participants in the occupation the board regulates, the board can invoke state action immunity only if it is subject to active supervision by the state. The state supervisor must review the substance of the agency's actions to ensure that such actions comport with clearly articulated and affirmatively expressed policy to displace competition with regulation, and must have the power to overrule or modify the actions.

The AMA has supported legislation that accomplishes these goals while not imposing an undue burden that would impede the important work of state medical boards to regulate the practice of medicine and protect the public health.

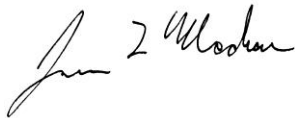
To ensure compliance with the *Dental Board* decision, we recommend replacing the word "majority" throughout the legislation with "controlling number." As noted above, the test for whether a board is subject to active state supervision is not dependent upon the percentage of members who are participants in the profession regulated, but whether those members exercise control over the board.

The Honorable Louis D. Greenwald
September 13, 2018
Page 2

The AMA understands that New Jersey law provides for defense and indemnification of licensing board members. While these protections are crucial, they are separate and distinct from the protections to the state and licensing board members that AB 4273 currently offers. In particular, AB 4273 should protect professional licensure boards from antitrust liability and resultant treble damages and attorney fee awards that the state would need to indemnify. Moreover, in the absence of AB 4273, the board would be subject to injunctive relief that could invalidate its challenged rules, a result that might also place at antitrust risk those professionals relying on the lawfulness of the licensing boards' rules.

The AMA appreciates your diligence and attention to this matter. With consideration of the suggested edits noted above, we are pleased to support AB 4273. If you have any questions or comments, please contact Kristin Schleiter, Senior Legislative Attorney, at kristin.schleiter@ama-assn.org or (312) 464-4783.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is written in a cursive style with a large initial "J" and "M".

James L. Madara, MD