

(j) A licensee having a significant beneficial interest, as defined in (a) above, in a health care service including a professional service corporation or a general business corporation (see N.J.A.C. 13:35-6.16(f)) shall notify the Board of such interest no later than February 18, 1993. Notice is not required for a practice conducted under the practitioner's own name.

(k) This rule shall be operative April 15, 1992.

New Rule, R.1992 d.75, effective February 18, 1992 (operative April 15, 1992, except as noted).

See: 23 N.J.R. 161(a), 23 N.J.R. 1063(a), 24 N.J.R. 626(a).

Public Notice: Stay of operative date of (e) until July 15, 1992.

See: 24 N.J.R. 1905(a).

Public Notice: Stay of operative date of portion of (a)2 until August 12, 1992.

See: 24 N.J.R. 2460(a).

Public Notice: Delayed operative date of (e) until August 15, 1992.

See: 24 N.J.R. 3443(b).

Administrative Correction to (a)5.

See: 24 N.J.R. 4409(a).

Amended by R.1995 d.8, effective January 3, 1995.

See: 25 N.J.R. 5441(a), 27 N.J.R. 120(a).

#### Law Review and Journal Commentaries

Examiners' Board Hits Physician Referrals. 133 N.J.L.J. No. 4, 11 (1993).

Rules Changes Target Medical Group Practices. Theodosia A. Tamborlane, 136 N.J.L.J. No. 11, 10 (1994).

#### 13:35-6.18 Medical malpractice coverage; letter of credit

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

"Authorized" means recognized by a governmental agency to offer medical malpractice insurance products.

"Covered" means ongoing maintenance of insurance in the sum of \$1 million per occurrence and \$3 million dollars per policy year, with extended reporting endorsement coverage for claims made ("tail coverage") issued by a carrier or other entity authorized to write medical malpractice policies.

"Letter of credit" means a non-assignable, non-transferable, unexpired, continuous irrevocable obligation, liability bond or other instrument issued by a bank or saving association authorized to do business in this State, payable to the physician or podiatrist as the beneficiary within 30 days after a demand for payment and the presentation of a final judgment or settlement in a medical malpractice action.

"Maintaining a professional practice with responsibility for patient care" means the furnishing of professional services to patients in New Jersey, including, but not limited to, the testing for, or diagnosis of, or the offering or furnishing of treatment, preventative medical care or consultation relating to human disease or dysfunction or physical condition, including the prescribing, administering or dispensing of products, devices or drugs at a place, such as an office (even

if located in a home), hospital or clinic, or through a business entity, such as a laboratory or mobile van service.

"Not available" means that a physician or podiatrist is unable to purchase medical malpractice insurance coverage from a carrier authorized to write medical malpractice insurance, including through programs relating to risk retention groups deemed eligible by the Department of Banking and Insurance, surplus lines registered with the Department of Banking and Insurance, self-insurance trusts or captive insurance companies approved by the New Jersey Health Care Facilities Financing Authority in the Department of Health and Senior Services. "Not available" for purposes of this section does not mean "not affordable."

(b) All physicians and podiatrists licensed to practice in this State who maintain a professional practice and have responsibility for patient care shall be covered by medical malpractice insurance or, if medical malpractice insurance is not available, shall secure and maintain a letter of credit at least in the sum of \$500,000 or more.

(c) For purposes of this section, physicians or podiatrists when practicing as employees of the Federal, State or county government or physicians practicing pursuant to an exemption from the prohibitions of the Medical Practice Act set forth at N.J.S.A. 45:9-21 will not be deemed to be maintaining a professional practice.

(d) Physicians and podiatrists who are not covered by medical malpractice insurance shall present to the Board a true copy of the letter of credit required pursuant to (b) above and shall notify the Board, within seven days, whenever:

1. A demand for payment on the letter has been made;
2. The continuing viability of the letter has been affected, for whatever reason; or
3. There has been a change in status affecting whether the physician or podiatrist is or continues to be exempt from the requirement.

(e) Violations of (b) and (d) above shall be deemed professional misconduct within the meaning of N.J.S.A. 45:1-21(e).

New Rule, R.1993 d.604, effective December 6, 1993.

See: 24 N.J.R. 4012(a), 25 N.J.R. 5487(a).

Repealed by R.1997 d.475, effective November 3, 1997.

See: 29 N.J.R. 842(a), 29 N.J.R. 4706(a).

Section was "Prescribing, dispensing or administering anabolic steroids".

New Rule, R.1999 d.117, effective April 5, 1999.

See: 30 N.J.R. 4318(a), 31 N.J.R. 881(a).

Petition for Rulemaking.

See: 35 N.J.R. 3418(a), 3967(c).

Petition for Rulemaking.

See: 36 N.J.R. 588(a).

Public Notice: Conference for Solicitation of Informal Public Input on Medical Malpractice Coverage Requirements.

See: 36 N.J.R. 1134(a).  
 Petition for Rulemaking.  
 See: 36 N.J.R. 4180(a).  
 Amended by R.2005 d.120, effective April 18, 2005.  
 See: 36 N.J.R. 4633(a), 37 N.J.R. 1203(a).

In (a), added "Authorized, inserted "or other entity" following "issued by a carrier" in "Covered", inserted ", liability bond or other instrument" following "irrevocable obligation" in "Letter of credit", and rewrote "Not available".

### 13:35-6.19 Duty to report changes in status

(a) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

"Ability to practice" means and is construed to include all of the following:

1. The cognitive capacity to make appropriate clinical diagnoses and exercise reasoned medical judgments and to learn and keep abreast of medical developments;
2. The ability to communicate those judgments and medical information to patients and other health care providers, with or without the use of aids or devices, such as voice amplifiers; and
3. The physical capability to perform medical tasks such as physical examination and surgical procedures, with or without the use of aids or devices, such as corrective lenses or hearing aids.

"Affiliation" means a professional relationship, including an employment relationship, a position as an independent contractor or the grant of privileges by a health care facility or health maintenance organization in this State or any other jurisdiction.

"Alternative Resolution Program" refers to the program established pursuant to N.J.A.C. 13:35-11 by which licensees suffering from medical conditions or chemical dependency may confidentially enter into a rehabilitation and monitoring program, under the sponsorship of an approved professional assistance program, subject to the periodic submission of coded status reports and continuing confidential review by the Board's Impairment Review Committee. To be deemed a participant in the Alternative Resolution Program, the licensee must be accepted by the Impairment Review Committee and assigned a code number.

"Biennial renewal form" means the form provided to a licensee by the Board, which must be completed in order to renew and keep current a license to practice in this State.

"Chemical substances" is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction, as well as those used illegally.

"Conviction" means a judgment of conviction entered following plea agreement or trial on an arrest, indictment, accusation or bill of particulars in a state or Federal criminal proceeding, or the resolution of such charges, whether by a plea of no contest or nolo contendere or by pre-trial diversion program.

"Directly associated" means a professional relationship including an employment relationship, partnership arrangement or a shareholder status in a professional service corporation or general business corporation. "Directly associated" does not include any relationship established pursuant to preferred provider agreements, IPA's or other provider panels.

"Disciplinary order" means a disposition suspending or revoking licensure privileges or imposing civil penalties or ordering the restoration of money or ordering corrective action or medical or other professional treatment or monitoring, or censuring or reprimanding a licensee.

"Financial interest" means a monetary interest of any amount held by a practitioner personally or through immediate family, as defined at N.J.S.A. 45:9-22.4 et seq.

"Health care facility" means a facility or institution, whether public or private, engaged in providing medical services, including diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, health maintenance organizations, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, boarding home for the sheltered care of adult persons, and bio-analytical laboratory or central services facilities serving one or more such institutions but excluding institutions that provide healing solely by prayer.

"Health care service entity" means a business entity which provides on an inpatient or outpatient basis: testing for a diagnosis or treatment of human disease or dysfunction; or dispensing of drugs or medical devices for the treatment of human disease or dysfunction. Health care service entity includes, but is not limited to, a bio-analytical laboratory, pharmacy, home health care agency, rehabilitation facility, nursing home, hospital, home infusion company, or facility which provides radiological or other diagnostic imagery services, physical therapy, ambulatory surgery, or ophthalmic services.

"Health maintenance organization" means any entity licensed by the State Department of Health which directly or through contracts with providers furnishes health care services on a prepaid basis to enrollees.