CHAPTER 35

BOARD OF MEDICAL EXAMINERS

Authority

N.J.S.A. 45:9-2.

Source and Effective Date

R.1994 d.522, effective September 19, 1994.
See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a).

Executive Order No. 66(1978) Expiration Date

Chapter 35, Board of Medical Examiners, expires on September 19, 1999.

Chapter Historical Note

Chapter 35, Board of Medical Examiners, was filed and became effective prior to September 1, 1969. Chapter 35, except Subchapter 8, Hearing Aid Dispensers, was repealed and new rules of the Board of Medical Examiners, Subchapters 1 through 6, were adopted as R.1983 d.314, effective August 1, 1983. See: 15 N.J.R. 503(a), 15 N.J.R. 1255(a). Subchapter 7, Chiropractic Practice, was adopted as R.1984 d.533, effective November 19, 1984. See: 16 N.J.R. 686(a), 16 N.J.R. 3208(a).

Pursuant to Executive Order No. 66(1978), Chapter 35 was readopted as R.1989 d.532, effective September 21, 1989. See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a). Subchapter 6A, Declarations of Death upon the Basis of Neurological Criteria, was adopted as R.1992 d.309, effective August 3, 1992. See: 23 N.J.R. 3635(a), 24 N.J.R. 2731(c). Subchapter 2A, Limited Licenses: Certified Nurse Midwifery, was adopted as R.1992 d.332, effective Subchapter 8, 1992. See: 23 N.J.R. 3632(a), 24 N.J.R. 3094(a). Subchapter 9, Acupuncture, was adopted as R.1993 d.299, effective June 21, 1993. See: 24 N.J.R. 4013(a), 25 N.J.R. 2689(c). Subchapter 10, Athletic Trainers, was adopted as R.1993 d.546, effective November 1, 1993. See: 25 N.J.R. 265(a), 25 N.J.R. 4935(a), 26 N.J.R. 483(a).

Pursuant to Executive Order No. 66(1978), Chapter 35 was readopted as R.1994 d.522. See: Source and Effective Date. As a part of R.1994 d.522, Subchapter 7, Chiropractic Practice, was repealed, effective October 17, 1994. See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a). Subchapter 11, Alternate Resolution Program, became effective June 19, 1995. See: 27 N.J.R. 640(a), 27 N.J.R. 2410(a). See, also, section annotations.

Law Review and Journal Commentaries

How New Jersey Regulates Doctors. Theodosia Tamborlane, 132 N.J.L.J. No. 15, S24 (1992).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. MEDICAL SCHOOLS, COLLEGES, EXTERNSHIPS, CLERKSHIPS AND POSTGRADUATE WORK

13:35-1.1 Externship program
13:35-1.2 Fifth Pathway
13:35-1.3 Postgraduate training
13:35-1.4 Military service in lieu of M.D. or D.O. internship or postgraduate training
13:35-1.5 Registration and permit requirements for graduate medical education programs in medicine or podiatry

SUBCHAPTER 1A. STANDARDS FOR NEW JERSEY CLINICAL TRAINING PROGRAMS SPONSORED BY MEDICAL SCHOOLS NOT ELIGIBLE FOR EVALUATION AND NOT APPROVED BY THE L.C.M.E., THE A.O.A. OR OTHER AGENCY RECOGNIZED BY THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

13:35-1A.1 Definitions and principles of responsibility
13:35-1A.2 Administration of the clinical training program
13:35-1A.3 Faculty
13:35-1A.4 Education program
13:35-1A.5 Facilities
13:35-1A.6 Request for approval
13:35-1A.7 Public record
13:35-1A.8 Termination of program approval
13:35-1A.9 Violations
13:35-1A.10 Severability
13:35-1A.11 Clerkship program approvals: effective date; limited waiver provision; no new applications

SUBCHAPTER 2. LIMITED LICENSES: PODIATRY, DIAGNOSTIC TESTING CENTERS AND MISCELLANEOUS

13:35-2.1 Approved colleges of podiatry
13:35-2.2 Podiatry internship or postgraduate work
13:35-2.3 Military service in lieu of internship in podiatry
13:35-2.4 (Reserved)
13:35-2.5 Medical standards governing screening and diagnostic medical testing offices
13:35-2.6 through 13:35-2.12 (Reserved)
13:35-2.13 Limited privileges and conditions of practice permitted for a graduate physician pending licensure
13:35-2.14 (Reserved)

SUBCHAPTER 2A. LIMITED LICENSES: CERTIFIED NURSE MIDWIFERY

13:35-2A.1 Certified Nurse Midwife practice
13:35-2A.2 Qualifications
13:35-2A.3 Minimum conditions of practice
13:35-2A.4 Normal antepartum management
13:35-2A.5 Normal intrapartum management
13:35-2A.6 Postpartum and well-woman health care
13:35-2A.7 Management of antepartum women at risk
13:35-2A.8 Care of intrapartum women at risk
13:35-2A.9 Certified Nurse Midwife Liaison Committee
13:35-2A.10 Limited privileges and conditions of practice permitted for a graduate nurse midwife pending results of certifying examination and licensure
13:35-2A.11 Prescriptive authorization

SUBCHAPTER 2B. LIMITED LICENSES: PHYSICIAN ASSISTANTS

13:35-2B.1 Purpose and scope
13:35-2B.2 Definitions
13:35-2B.3 Practice requirements
13:35-2B.4 Scope of practice
13:35-2B.5 Eligibility for licensure
13:35-2B.6 Refusal to issue, suspension or revocation of license
13:35-2B.7 License renewal, continuing education requirement
13:35-2B.8 Credit-hour requirements
13:35-2B.9 Waiver of continuing education requirement
13:35-2B.10 Supervision
13:35-2B.11 Recordkeeping
13:35-2B.12 Requirements for issuing prescriptions for medications
13:35-2B.13 Eligibility for temporary licensure
13:35-2B.14 Temporary licensure; scope of practice
13:35-2B.15 Supervision of temporary license holder
13:35-2B.16 Expiration of temporary license; renewal

New Jersey State Library

SUBCHAPTER 3. LICENSING EXAMINATIONS AND ENDORSEMENTS, LIMITED EXEMPTIONS FROM LICENSURE REQUIREMENTS

13:35-3.1 Licensing examination; physicians
13:35-3.2 Endorsement; physicians
13:35-3.3 Endorsement; podiatric physicians
13:35-3.4 (Reserved)
13:35-3.5 Endorsement; certified nurse midwives
13:35-3.6 Bioanalytical laboratory director license, plenary or specialty, granted to physicians
13:35-3.7 Limited exemption from licensure; physicians
13:35-3.8 Administrative processing of license application
13:35-3.9 Postponement of or absence from examination; transfer or refund of fee
13:35-3.10 Subversion or attempt to subvert the licensing examination process
13:35-3.11 Standards for licensure of physicians graduated from medical schools not approved by American national accrediting agencies
13:35-3.12 Standards for licensure of physicians with post-secondary educational deficiencies
13:35-3.13 Criminal history record information

SUBCHAPTER 4. SURGERY

13:35-4.1 Major surgery; qualified first assistant
13:35-4.2 Termination of pregnancy

SUBCHAPTER 5. EYE EXAMINATIONS; EYEGLASSES

13:35-5.1 Minimum eye examination; contact lenses
13:35-5.2 Minimum standards and tolerances of optical lenses

SUBCHAPTER 6. GENERAL RULES OF PRACTICE

13:35-6.1 Practice identification
13:35-6.2 Pronouncement of death
13:35-6.3 Sexual misconduct
13:35-6.4 (Reserved)
13:35-6.5 Preparation of patient records, computerized records, access to or release of information; confidentiality, transfer or disposal of records
13:35-6.6 Requirements for issuing prescriptions for and dispensing all medications; special requirements for prescribing or dispensing controlled drugs
13:35-6.7 Prescribing of amphetamines and sympathomimetic amine drugs
13:35-6.8 Prescribing, administering or dispensing amygdalin (laetrile)
13:35-6.9 Referral for radiological services
13:35-6.10 Advertising and solicitation practices
13:35-6.11 Excessive fees
13:35-6.12 (Reserved)
13:35-6.13 Fee Schedule
13:35-6.14 Delegation of physical modalities to a licensed health care provider or an unlicensed physician aide
13:35-6.15 Delegation of tasks to physician assistants
13:35-6.16 Professional practice structure
13:35-6.17 Professional fees and investments, prohibition of kickbacks
13:35-6.18 Prescribing, dispensing or administering anabolic steroids
13:35-6.19 Duty to report changes in status
13:35-6.20 (Reserved)
13:35-6.21 Hair replacement techniques

SUBCHAPTER 6A. DECLARATIONS OF DEATH UPON THE BASIS OF NEUROLOGICAL CRITERIA

13:35-6A.1 Purpose
13:35-6A.2 Definitions
13:35-6A.3 Requirements for physicians authorized to declare death on the basis of neurological criteria
13:35-6A.4 Standards for determination of brain death
13:35-6A.5 Criteria and testing for establishment of brain death
13:35-6A.6 Objective documentation
13:35-6A.7 Certification of death

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. HEARING AID DISPENSERS

13:35-8.1 Purpose
13:35-8.2 Definitions
13:35-8.3 Training permits; issuance and practice
13:35-8.4 Temporary licenses; issuance
13:35-8.5 Temporary licenses; practice
13:35-8.6 Sponsors
13:35-8.7 Scope of practice
13:35-8.8 Fitting and dispensing of deep ear canal hearing aid devices
13:35-8.9 Supervising licensee
13:35-8.10 Notification to the Committee; suspension of license for failure to renew
13:35-8.11 Equipment
13:35-8.12 Hearing testing
13:35-8.13 Advertising and Solicitation
13:35-8.14 Abandonment; excessive fees
13:35-8.15 Itemization of services and equipment; retention of records
13:35-8.16 Licensing examination
13:35-8.17 Violation of the Rules
13:35-8.18 Fee schedule
13:35-8.19 License renewal; continuing education requirement

SUBCHAPTER 9. ACUPUNCTURE

13:35-9.1 Purpose and scope
13:35-9.2 Definitions
13:35-9.3 Credentials required for certification
13:35-9.4 Examination requirements
13:35-9.5 Prohibited acts
13:35-9.6 Fee schedule
13:35-9.7 Term of lawful practice; biennial registration
13:35-9.8 Standards of practice
13:35-9.9 Accepted equipment and devices; procedures
13:35-9.10 Precautionary and sterilization procedures
13:35-9.11 Patient records
13:35-9.12 Guest acupuncturist
13:35-9.13 Tutorial applications and design of tutorial program
13:35-9.14 Responsibilities of supervising acupuncturist
13:35-9.15 Responsibilities of the acupuncture trainee
13:35-9.16 Training required of a physician or dentist
13:35-9.17 Continuing professional education requirements

APPENDIX A

SUBCHAPTER 10. ATHLETIC TRAINERS

13:35-10.1 Scope and purpose
13:35-10.2 Definitions
13:35-10.3 Education standards
13:35-10.4 Examinations
13:35-10.5 (Reserved)
13:35-10.6 Approved activities
13:35-10.7 Violations
13:35-10.8 Fees

SUBCHAPTER 11. ALTERNATIVE RESOLUTION PROGRAM

13:35-11.1 Definitions
13:35-11.2 Creation of Impairment Review Committee
13:35-11.3 Duties of an approved professional assistance program
13:35-11.4 Duties of the Impairment Review Committee
13:35-11.5 Professional assistance program approval
13:35-11.6 Colleague referrals
13:35-11.7 Alternative Resolution Program pilot period

Section was "Countersigning of order and prescriptions of unlicensed physicians."
New Rule, R.1996 d.242, effective May 20, 1996.
See: 28 N.J.R. 65(a), 28 N.J.R. 2560(a).

13:35–6.4 (Reserved)

Amended by R.1989 d.532, effective October 16, 1989.
See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a).
At (a)3 added ... "purchasing or" prescribing ...
Repealed by R.1992 d.75, effective February 18, 1992 (operative April 15, 1992).
See: 23 N.J.R. 161(a), 23 N.J.R. 1063(a), 24 N.J.R. 626(a).
Old section was "prohibition of kickbacks, rebates or receiving a payment for services not rendered."

13:35–6.5 Preparation of patient records, computerized records, access to or release of information; confidentiality, transfer or disposal of records

(a) The following terms shall have the following meanings unless the context in which they appear indicates otherwise:

"Authorized representative" means, but is not necessarily limited to, a person who has been designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an agent of an insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative.

"Examinee" means a person who is the subject of professional examination where the purpose of that examination is unrelated to treatment and where a report of the examination is to be supplied to a third party.

"Licensee" means any person licensed or authorized to engage in a health care profession regulated by the Board of Medical Examiners.

"Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of treatment or a consultation relating to treatment.

(b) Licensees shall prepare contemporaneous, permanent professional treatment records. Licensees shall also maintain records relating to billings made to patients and third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of seven years from the date of the most recent entry.

1. To the extent applicable, professional treatment records shall reflect:

i. The dates of all treatments;

ii. The patient complaint;

iii. The history;

iv. Findings on appropriate examination;

v. Progress notes;

vi. Any orders for tests or consultations and the results thereof;

vii. Diagnosis or medical impression;

viii. Treatment ordered, including specific dosages, quantities and strengths of medications including refills if prescribed, administered or dispensed, and recommended follow-up;

ix. The identity of the treatment provider if the service is rendered in a setting in which more than one provider practices;

x. Documentation when, in the reasonable exercise of the physician's judgment, the communication of test results is necessary and action thereon needs to be taken, but reasonable efforts made by the physician responsible for communication have been unsuccessful; and

xi. Documentation of the existence of any advance directive for health care for an adult or emancipated minor, and associated pertinent information. Documented inquiry shall be made on the routine intake history form for a new patient who is a competent adult or emancipated minor. The treating doctor shall also make and document specific inquiry of or regarding a patient in appropriate circumstances, such as when providing treatment for a significant illness, or where an emergency has occurred presenting imminent threat to life, or where surgery is anticipated with use of general anesthesia.

2. Corrections/additions to an existing record can be made, provided that each change is clearly identified as such, dated and initialled by the licensee.

3. A patient record may be prepared and maintained on a personal or other computer only when it meets the following criteria:

i. The patient record shall contain at least two forms of identification, for example, name and record number or any other specific identifying information;

ii. An entry in the patient record shall be made by the physician contemporaneously with the medical service and shall contain the date of service, date of entry, and full printed name of the treatment provider. The physician shall finalize or "sign" the entry by means of a confidential personal code ("CPC") and include date of the "signing";

iii. Alternatively, the physician may dictate a dated entry for later transcription. The transcription shall be dated and identified as "preliminary" until reviewed, finalized and dated by the responsible physician as provided in (b)3ii above;

iv. The system shall contain an internal permanently activated date and time recordation for all entries, and shall automatically prepare a back-up copy of the file;

v. The system shall be designed in such manner that, after "signing" by means of the CPC, the existing entry cannot be changed in any manner. Notwithstanding the permanent status of a prior entry, a new entry may be made at any time and may indicate correction to a prior entry;

vi. Where more than one licensee is authorized to make entries into the computer file of any professional treatment record, the physician responsible for the medical practice shall assure that each such person obtains a CPC and uses the file program in the same manner;

vii. A copy of each day's entry, identified as preliminary or final as applicable, shall be made available promptly:

(1) To a physician responsible for the patient's care;

(2) To a representative of the Board of Medical Examiners, the Attorney General or the Division of Consumer Affairs as soon as practicable and no later than 10 days after notice; and

(3) To a patient as authorized by this rule within 30 days of request (or promptly in the event of emergency); and

viii. A licensee wishing to continue a system of computerized patient records, which system does not meet the requirements of (b)3i through vii above, shall promptly initiate arrangements for modification of the system which must be completed by October 19, 1993. In the interim, the licensee shall assure that, on the date of the first treatment of each patient treated subsequent to October 19, 1992, the computer entry for that first visit shall be accompanied by a hard copy printout of the entire computer-recorded treatment record. The printout shall be dated and initialled by the attending licensee. Thereafter, a hard copy shall be prepared for each subsequent visit, continuing to the date of the changeover of computer program, with each page initialled by the treating licensee. The initial printout and the subsequent hard copies shall be retained as a permanent part of the patient record.

(c) Licensees shall provide access to professional treatment records to a patient or an authorized representative in accordance with the following:

1. No later than 30 days from receipt of a request from a patient or an authorized representative, the licensee shall provide a copy of the professional treatment record, and/or billing records as may be requested. The record shall include all pertinent objective data including test results and x-ray results, as applicable, and subjective information.

2. Unless otherwise required by law, a licensee may elect to provide a summary of the record in lieu of providing a photocopy of the actual record, so long as that summary adequately reflects the patient's history and treatment. A licensee may charge a reasonable fee for the preparation of a summary which has been provided in lieu of the actual record, which shall not exceed the cost allowed by (c)4 below for that specific record.

3. If, in the exercise of professional judgment, a licensee has reason to believe that the patient may be harmed by release of the subjective information contained in the professional treatment record or a summary thereof, the licensee may refuse to provide such information. That record or the summary, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

i. The patient's attorney;

ii. Another licensed health care professional; or

iii. The patient's health insurance carrier.

4. Licensees may require a record request to be in writing and may charge a fee for the reproduction of records, which shall be no greater than $1.00 per page or $100.00 for the entire record, whichever is less. (If the record requested is less than 10 pages, the licensee may charge up to $10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.) If the licensee is electing to provide a summary in lieu of the actual record, the charge for the summary shall not exceed the cost that would be charged for the actual record.

5. If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the licensee shall provide a transcription at no cost to the patient.

6. The licensee shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

(d) Licensees shall maintain the confidentiality of professional treatment records, except that:

1. The licensee shall release patient records as directed by a subpoena issued by the Board of Medical Examiners or the Office of the Attorney General, or by a demand for statement in writing under oath, pursuant to N.J.S.A. 45:1–18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All x-ray films and reports maintained by the licensee, including those prepared by other health care professionals, shall also be provided.