

(d) The Board in its discretion may waive any or all of the required subjects if the credentials presented include proof of a score of 80 on each part of the Federation Licensing Examination or the Uniform State Medical Licensing Examination.

(e) If the Board identifies substantive deficiencies, and none of the credentials identified at (b), (c) or (d) above have been presented, the applicant may be provided leave to secure such credentials and the Board, upon request, may provide guidance to applicants seeking to remediate deficiencies.

New Rule, R.1994 d.539, effective November 7, 1994.
See: 26 N.J.R. 2742(b), 26 N.J.R. 4418(a).

13:35-3.13 Criminal history record information

The Board shall require a criminal history record check by the Division of State Police of all applicants for initial licensure to practice medicine and surgery in this State. Such criminal history record checks shall be obtained, processed and maintained in accordance with the procedures established by the Division of State Police pursuant to P.L. 1994, c.60 (N.J.S.A. 53:1-20.5 et seq.) and N.J.A.C. 13:59. Such criminal history records shall be disseminated in strict accordance with the limitations established by the Division of State Police pursuant to N.J.A.C. 13:59-1.6 and are not public records within the meaning of the Right to Know Law, P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.). Fees for criminal history record checks shall be paid by applicants for licensure in conformity with P.L. 1994, c.60 (N.J.S.A. 53:1-7) and N.J.A.C. 13:59-1.3 and 1.4. In addition to its use in evaluating an application for initial licensure, the Board may obtain criminal history record information from the Division of State Police for any other purpose authorized by statute or regulation.

New Rule, R.1995 d.554, effective October 16, 1995.
See: 27 N.J.R. 1743(a), 27 N.J.R. 3964(a).

SUBCHAPTER 4. SURGERY

Subchapter Historical Note

Petition for Rulemaking. See: 31 N.J.R. 2276(a), 32 N.J.R. 609(a).

13:35-4.1 Major surgery; qualified first assistant

(a) A major surgical procedure is one with a substantial hazard to the life, health or welfare of the patient. By way of example, but not limitation, a major surgical procedure includes:

1. A procedure in which an opening is made into any of the three major body cavities (abdomen, chest or head), exclusive of endoscopic approaches which explore existing channels and involve no transverse of a body wall (for example, bronchoscopy, colonoscopy) or are exclusively diagnostic (for example, laparoscopy, colposcopy).

With respect to non-diagnostic endoscopic procedures requiring the transverse of a body wall, a duly qualified first assistant shall be immediately available on the premises of the health care facility;

2. A procedure performing a major amputation;

3. A procedure performed where the locality, the condition, the difficulty or the length of time required to operate would constitute a direct hazard to the life of the patient.

(b) A major surgical procedure shall be performed by a duly qualified surgeon with a duly qualified assisting physician who may be a duly qualified resident in or rotating through a training program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association.

(c) In addition to those individuals listed in (b) above who may act as qualified first assistants, in a health care facility licensed by the Department of Health and Senior Services, a duly qualified registered nurse first assistant (RNFA) or a duly qualified physician assistant may so act. A duly qualified certified nurse midwife (CNM) may also act as a qualified first assistant in the performance of cesarean sections. For purposes of this subsection, a licensed CNM shall be deemed to be "duly qualified" provided that the CNM has taken and passed a 30-hour didactic training course that includes anatomy, physiology, surgical technique (including wound closure), and direct observation of cesarean sections. Following the completion of the course, a CNM shall serve and be supervised as a second assistant on 10 cesarean sections and complete a supervised preceptorship as a first assistant in 20 cesarean sections.

(d) A duly qualified surgeon, duly qualified assistant physician, duly qualified resident, duly qualified registered nurse first assistant, duly qualified physician assistant, or duly qualified certified nurse midwife (CNM) shall be determined by the hospital credentials committee in conjunction with the chairman or chief of the appropriate committee in conjunction with the chairman or chief of the appropriate department or division consistent with the requirements of law or applicable rule.

(e) Licensees shall comply with the rules as promulgated by the medical staff at the health care facility and shall cooperate to assure compliance with the rules of the Board as well as any rules of the Department of Health and Senior Services which licenses the facility.

(f) In all instances in which a registered nurse first assistant, a physician assistant, or duly qualified certified nurse midwife (CNM) may act as first assistant pursuant to (c) above, the operating surgeon shall have discretion to determine whether to utilize such an individual as a first assistant, despite the fact that they are permitted to so act pursuant to this rule.

(g) In the event of incapacity or unavailability of the operating surgeon during a major surgical procedure, the functions of a first assistant who is not a physician shall be limited to maintaining the status of the patient while a substitute operating surgeon is summoned, except in matters of dire emergency. "Dire emergency" shall include only those circumstances posing a significant risk of imminent death or serious bodily injury to the patient, such as uncontrolled bleeding.

Amended by R.1989 d.532, effective October 16, 1989.

See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a).

Deleted reference to specific statute.

Amended by R.1994 d.522, effective October 17, 1994.

See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a).

Amended by R.1995 d.503, effective September 5, 1995.

See: 27 N.J.R. 1744(a), 27 N.J.R. 3365(a).

Amended by R.1999 d.356, effective October 18, 1999.

See: 31 N.J.R. 1742(a), 31 N.J.R. 3117(a).

In (a)1, substituted "on the premises of the health care facility" for "in the operating suite" at the end; and rewrote (e).

Amended by R.2000 d.66, effective February 22, 2000.

See: 31 N.J.R. 252(a), 32 N.J.R. 710(a).

In (c), added the second through fourth sentences; and in (d) and (f), inserted references to duly qualified certified nurse midwives.

Cross References

Physician assistant, assisting surgery, see N.J.A.C. 13:35-2B.1 et seq.

Case Notes

Validity of rule (dissenting opinion). *Eatough v. Albano*, 673 F.2d 671 (1982) certiorari denied 102 S.Ct. 2931, 457 U.S. 1119, 73 L.Ed.2d 1331.

License revocation for violation of Medical Practice Act upheld; no denial of due process; Board could only impose monetary penalty for each statutory provision violated; additional penalties for multiple violations of each provision improper where physicians had no prior convictions for such offenses. In re *Suspension of License of Wolfe*, 160 N.J.Super. 114, 388 A.2d 1316 (App.Div.1978) certification denied 78 N.J. 406, 396 A.2d 592 (1978).

Former N.J.A.C. 13:35-7.1 governing the conduct of major surgery upheld as not inconsistent with the Medical Practice Act and as neither arbitrary, capricious, unreasonable nor vague. *Garden State Community Hospital v. State Bd. of Medical Examiners*, 147 N.J.Super. 592, 371 A.2d 794 (App.Div.1977) certification denied 74 N.J. 283, 377 A.2d 688 (1977).

13:35-4.2 Termination of pregnancy

(a) This rule is intended to regulate the quality of medical care offered by licensed physicians for the protection of the public, and is not intended to affect rules of the Department of Health establishing institutional requirements. To the extent that rules of the two agencies may overlap, the Medical Board recognizes and relies upon the regulatory procedures of the Department of Health in establishing minimum acceptable standards for non-physician personnel, equipment and resources, the adequacy of the physical plant of the facility in which surgical procedures shall be performed, and the facility's interrelationship with an adequate network of health care-related resources such as ambulance service, etc.

(b) The termination of a pregnancy at any stage of gestation is a procedure which may be performed only by a physician licensed to practice medicine and surgery in the State of New Jersey.

(c) Provisions of this rule referring to stage of pregnancy shall be in terms of weeks from start of last menstrual period or "weeks LMP." For example, the stage of pregnancy at 12 weeks' gestational size, as determined by a physician, is the equivalent of 14 weeks from the first day of the last menstrual period (LMP).

(d) After 14 weeks LMP, any termination procedure other than dilatation and evacuation (D & E) shall be performed only in a licensed hospital.

(e) Fifteen weeks through 18 weeks LMP: After 14 weeks LMP and through 18 weeks LMP, a D & E procedure may be performed either in a licensed hospital or in a licensed ambulatory care facility (referred to herein as LACF) authorized to perform surgical procedures by the Department of Health. The physician may perform the procedure in an LACF which shall have a Medical Director who shall chair a Credentials Committee. The Committee shall grant to operating physicians practice privileges relating to the complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician for the health, safety and welfare of the public. A list of the privileges of each physician shall contain the effective date of each privilege conferred, shall be reviewed at least biennially, and shall be preserved in the files of the LACF.

(f) Nineteen weeks through 20 weeks LMP: A physician planning to perform a D & E procedure after 18 weeks LMP and through 20 weeks LMP in an LACF shall first file with the Board a certification signed by the Medical Director that the physician meets the eligibility standards set forth in (f)1 through 7 below and shall comply with its requirements.

1. The physician is certified or eligible for certification by the American Board of Obstetrics-Gynecology or the American Osteopathic Board of Obstetrics-Gynecology, and the physician satisfactorily completes at least 15 hours of Continuing Medical Education each year in obstetrics-gynecology.

2. The physician has admitting and surgical privileges at a nearby licensed hospital which has an operating room, blood bank, and an intensive care unit. The hospital shall be accessible within 20 minutes driving time during the usual hours of operation of the clinic.

3. The procedure shall be done in a location which is designated by the Department of Health as a licensed ambulatory care facility (LACF) authorized to perform surgical procedures as in subsection (e) above. The LACF shall be licensed by the Department of Health as an ambulatory care facility authorized to perform surgical procedures. The facility shall be in current and good standing at all times when surgical procedures are performed there. The LACF shall have a written agreement with an ambulance service assuring immediate transportation of a patient at all times when a patient has been admitted for surgery and until the patient has been discharged from the recovery room.

(b) A practitioner or physician who offers anesthesia services in an office setting shall purchase and install the equipment and safety systems, as required pursuant to this rule, no later than December 15, 1998. Alternatively, a practitioner or physician shall have written proof that by October 15, 1998, an order for such equipment has been transmitted to and received by a manufacturer or legitimate vendor of the equipment. Such proof shall include an anticipated date of delivery. All such equipment shall be properly installed in a timely fashion after delivery and shall be used in conformance with this section, no later than December 15, 1998.

(c) All other requirements of this subchapter shall be effective June 15, 1998.

13:35-4A.18 Enforcement

(a) Any violation of N.J.A.C. 13:35-4A.3 through 4A.17 shall be deemed to be professional misconduct within the meaning of N.J.S.A. 45:1-21(e) and may further constitute violation of other law or rule, as applicable to the circumstances.

SUBCHAPTER 5. EYE EXAMINATIONS; EYEGLASSES

Subchapter Historical Note

Petition for Rulemaking. See: 30 N.J.R. 3340(b), 30 N.J.R. 3867(a), 31 N.J.R. 905(a), 31 N.J.R. 2276(a), 32 N.J.R. 609(a).

13:35-5.1 Minimum eye examination; contact lenses

(a) Physicians licensed to practice medicine and surgery, when performing an eye examination for the purpose of prescribing corrective lenses, shall fully and adequately disclose to the patient the limited purpose of the eye examination. The physician shall perform, and keep a complete record of, physical examination of the patient which shall include:

1. A complete history of visual aberrations;
2. A determination of visual acuity in each eye separately;
3. A cover test, distance and near, and a determination of muscle balance or imbalance;
4. An ophthalmoscopic examination and a determination of any abnormalities of lids, cornea, pupils, lens, vitreous and fundus. A record entry of "negative" or "clear" should be made if no pathology is found.

(b) Upon observing positive findings of ocular disease or abnormality, the physician shall disclose his findings to the patient and suggest an appropriate course of action.

(c) An ophthalmologist shall release a copy of a patient's contact lens prescription directly to a patient or to a licensed ophthalmologist, a licensed optometrist, or a New Jersey licensed ophthalmic dispenser upon either the oral or written request of a patient or a professional acting on a patient's behalf, provided that the prescription is not more than two years old.

Amended by R.1999 d.356, effective October 18, 1999.
See: 31 N.J.R. 1742(a), 31 N.J.R. 3117(a).
Rewrote (c).

13:35-5.2 Minimum standards and tolerances of optical lenses

(a) Every pair of lenses, spectacles, eyeglasses or appurtenances thereto, prepared for or dispensed to the intended wearers from written prescriptions of physicians duly licensed to practice their profession, or duplication, replacements, reproductions or repetitions, must conform to the following minimum standards and tolerances:

PHYSICAL QUALITY AND APPEARANCE

1. Surface imperfections

TOLERANCE: No pits, scratches (other than hairline), grayness or watermarks shall be acceptable.

2. Glass defects

TOLERANCE: No bubbles, striae and inclusions shall be acceptable.

3. Localized power errors

TOLERANCE: Waves found by visual inspection shall be passable if no deterioration in image quality is found when the localized area is examined with a standard lens measuring instrument.

4. Refractive powers

TOLERANCE: 0.0 to 6.00, + or -0.12.

6.25 to 12.00, 2 per cent of power.

Above 12.00, + or -0.25.

Maximum cylinder power variation + or -0.12.

5. Refractive power addition

TOLERANCE: + or -0.12.0.

6. Cylinder Axis

TOLERANCE: 0.12 to 0.37 + or -3 degrees.

0.50 to 1.00, + or -2 degrees.

1.12 on up, + or -1 degree.

7. Prism power and location of specified optical center

TOLERANCE: Vertical + or -0.25 prism for each lens or a total of 0.50 prism imbalance. Horizontal + or -0.25 prism for each lens or a total of 0.50 prism imbalance.

8. Segment size

TOLERANCE: + or -0.5 mm. Pair must be symmetrical upon visual inspection.

9. Segment location

TOLERANCE: As specified within + or -0.5 mm.

10. Lens size:

i. Rimless

TOLERANCE: + or -0.5 mm;

ii. Bevel, for plastic frames

TOLERANCE: + or -0.5 mm;

iii. Bevel, for metal frames

TOLERANCE: To fit standard specified frame. Lens shape must match. Edges must be smooth and straight and sharp edge must be removed.

11. Heat-treated and chemically-treated industrial safety eyewear

TOLERANCE: Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.

12. Heat-treated and chemically-treated dress eyewear

TOLERANCE: Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.

(b) Provided, however, that nothing herein shall be construed to prohibit deviations beyond those established by this rule, provided that good medical cause exists therefor.

SUBCHAPTER 6. GENERAL RULES OF PRACTICE

13:35-6.1 Practice identification

(a) A physician with a plenary license to practice medicine and surgery in the State of New Jersey shall make representation for professional purposes (office identification, stationery, professional cards, signature on insurance claim forms, education, etc.) in a manner clearly indicating such plenary licensure and/or practice specialty; for example: Dr. John Doe, physician and surgeon; or Dr. Jane Smith, physician; or Dr. John Doe, surgeon; or Dr. Jane Smith, licensed to practice medicine and surgery; or Dr. Jane Doe, physician, practice limited to (name of specialty); or similar accurate descriptive terms. In addition to or as an alternative to these titles, a licensee may use the standard and accepted abbreviation of professional degree conferred by the medical school; that is, John Smith, M.D.; Jane Smith, D.O., as the case may be.

(b) An applicant or current licensee who is a graduate of both an A.M.A.-accredited allopathic professional school and an A.O.A.-accredited osteopathic professional school may elect to use either M.D. or D.O. as the primary abbreviation following the name and shall notify the Board of such election.

(c) A licensee with a limited license issued by the Board shall identify himself or herself for professional purposes in a manner clearly indicating the licensed profession by name or by using the recognized and accepted abbreviation of the degree actually conferred by the professional college; for example: Jane Smith, Podiatrist or Jane Smith, D.P.M.; John Doe, Bioanalytical Laboratory Director or John Doe, B.L.D. or John Doe, Specialty Bioanalytical Laboratory Director in Chemistry, etc.; Jane Smith, Certified Nurse Midwife or C.N.M.

(d) The use of any letters in immediate conjunction with the name of a licensee shall be deemed a representation of earned academic professional degree. Any such degree shall have been conferred by an educational institution authorized by the appropriate higher education authorities in its state of domicile to do so. The licensee may also list abbreviations of membership in non-profit incorporated professional societies.

(e) All representations by licensees of degree abbreviations or of professional society affiliations shall comply with this rule, and any use of an academic degree or professional or membership abbreviation not in accordance with these standards shall be deemed a misrepresentation and professional misconduct.

(f) All professional representations, including, but not limited to, letterhead stationery, business cards and claim forms, shall identify the street address(es) of the licensee's professional practice location(s). A post office box, whether for general mailing or for billing purposes, may be listed on the professional representation as a preferred mailing address but the professional representation shall also include the licensee's professional practice location(s).

New Rule, R.1985 d.103, effective March 4, 1985.

See: 16 N.J.R. 3178(a), 17 N.J.R. 606(a).

This adoption repealed former rule "Degree designation".

Amended by R.1994 d.522, effective October 17, 1994.

See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a).

Amended by R.1999 d.154, effective May 17, 1999.

See: 30 N.J.R. 4317(a), 31 N.J.R. 1360(b).

Added (f).

13:35-6.2 Pronouncement of death

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