

CHAPTER 35

BOARD OF MEDICAL EXAMINERS

Authority

N.J.S.A. 45:9-2 and 45:1-15.1.

Source and Effective Date

R.2005 d.120, effective March 17, 2005.
See: 36 N.J.R. 4633(a), 37 N.J.R. 1203(a).

Chapter Expiration Date

Chapter 35, Board of Medical Examiners, expires on March 17, 2010.

Chapter Historical Note

Chapter 35, Board of Medical Examiners, was adopted and became effective prior to September 1, 1969.

Chapter 35, Board of Medical Examiners, was repealed and Chapter 35, Board of Medical Examiners, was adopted as new rules by R.1983 d.314, effective August 1, 1983.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, Board of Medical Examiners, 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, Board of Medical Examiners, was readopted as R.1994 d.522, effective September 19, 1994, and Subchapter 7, Chiropractic Practice, was repealed by R.1994 d.522, effective October 17, 1994. See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a).

Subchapter 2B, Limited Licenses: Physician Assistants, was adopted as R.1994 d.538, effective November 7, 1994. See: 25 N.J.R. 5099(b), 26 N.J.R. 4411(b).

Subchapter 11, Alternate Resolution Program, was adopted as R.1995 d.339, effective June 19, 1995. See: 27 N.J.R. 1363(a), 27 N.J.R. 2412(a).

Subchapter 7, Prescription, Administration and Dispensing of Drugs, was adopted as R.1997 d.475, effective November 3, 1997. See: 29 N.J.R. 842(a), 29 N.J.R. 4706(a).

Subchapter 4A, Surgery, Special Procedures, and Anesthesia Services Performed in an Office Setting, was adopted as R.1998 d.294, effective June 15, 1998. See: 29 N.J.R. 2238(a), 30 N.J.R. 2236(b).

Petition for Rulemaking. See: 30 N.J.R. 740(c), 1642(a).

Pursuant to Executive Order No. 66(1978), Chapter 35, Board of Medical Examiners, was readopted as R.1999 d.356, effective September 20, 1999. See: 31 N.J.R. 1742(a), 31 N.J.R. 3117(a).

Subchapter 12, Electrologists Advisory Committee; Licensure of Electrologists and Electrology Instructors; Electrology Standards of Practice, was adopted as R.2004 d.279, effective July 19, 2004. See: 35 N.J.R. 3263(a), 36 N.J.R. 3401(a).

Subchapter 13, Perfusionists Advisory Committee, was adopted as R.2005 d.88, effective March 7, 2005. See: 36 N.J.R. 1721(a), 37 N.J.R. 782(a).

Chapter 35, Board of Medical Examiners, was readopted as R.2005 d.120, effective March 17, 2005. See: Source and Effective Date. 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).

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2. Signed by both the advanced practice nurse and the physician, with an acknowledgment that any inappropriate professional behavior or violation of the protocol on the part of either the physician or the advanced practice nurse will be reported to his or her respective licensing board;

3. Maintained on the premises of every office in which the advanced practice nurse practices;

4. Updated on an ongoing basis to reflect changes in the practice, office personnel, skills of the advanced practice nurse, frequency of record review, and reference materials containing practice guidelines or accepted standards of practice; and

5. Reviewed at least on an annual basis.

(c) The content of a joint protocol under (b) above shall address:

1. The nature of the practice, the patient population (for example, pediatric patients) and settings (for example, inpatient, nursing home, patient residences or other alternative care environments);

2. Any particular circumstances for which, prior to prescribing, a specific examination is to be performed or a definitive diagnosis made;

3. The recordkeeping methodology to be used in the practice (for example, the protocol might indicate that records should contain subjective complaints, objective findings, an assessment and a plan of treatment);

4. A list of categories of medications appropriate to the practice;

5. A delineation of specific medications and the specific number of refills, to be prescribed pursuant to the direction of the physician;

6. Specific requirements with respect to the recordation, in the patient record and/or in separate logs, of medications prescribed or dispensed, dosages, frequency, duration, instructions for use and authorizations for refills;

7. Any medical conditions or findings within the nature of the practice which should require direct consultation prior to the prescribing or ordering of medications or devices;

8. The frequency and methodology to be employed to ensure periodic review of patient records;

9. Identification of the means by which the advanced practice nurse and collaborating physician can be in direct communication, as well as a description of arrangements which will assure that the collaborating physician or peer coverage is accessible and available;

10. Procedures for the use of medications in emergency situations; and

11. Identification of reference materials containing practice guidelines or accepted standards of practice.

(d) Failure to establish and implement joint protocols consistent with the standards set forth in this section and any violation of the joint protocol by an advanced practice nurse or physician may be deemed professional misconduct or other grounds for disciplinary sanction within the meaning of N.J.S.A. 45:1-21 by his or her respective licensing board.

New Rule, R.2000 d.274, effective July 3, 2000 (operative September 1, 2000).

See: 31 N.J.R. 1459(a), 32 N.J.R. 2448(a).

13:35-6.7 (Reserved)

Amended by R.1983 d.490, effective November 7, 1983.

See: 15 N.J.R. 785(a), 15 N.J.R. 1866(a).

In (c)2., added "or repeated" malpractice and added section (c) to statutory cite.

Amended by R.1991 d.597, effective December 16, 1991.

See: 23 N.J.R. 2248(a), 23 N.J.R. 3763(a).

Revised (a)1.

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

See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(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 of amphetamines and sympathomimetic amine drugs".

13:35-6.8 Prescribing, administering or dispensing amygdalin (laetrile)

(a) The prescription or administration of amygdalin (laetrile) is a medical procedure which may only be performed by a physician licensed to practice medicine and surgery in the State of New Jersey, or a physician duly licensed to practice medicine and surgery in another state provided the practitioner does not open an office or place for the practice of his profession in this State.

(b) A licensed physician may prescribe, administer or dispense amygdalin (laetrile) to such physician's patient, consistent with the following standards and providing that the patient has signed the "written information request . . . for medical treatment" as set forth herein:

1. Generally:

i. As an adjunct to recognized, customary, or accepted modes of therapy; or

ii. Utilized exclusively in the treatment of any malignancy, disease, illness or physical condition; and

iii. If and when the physician has received a confirmed diagnosis of said malignancy, disease, illness or physical condition;

2. In the course of medically justifiable dietary supplement therapy;

3. As a prophylactic medication.

(c) The informed request for prescription of laetrile for medical treatment must utilize the wording appearing on a form which is available on request from the Board.

1. The form shall be prepared in quadruplicate and distributed as follows:

- i. Original copy to State Department of Health;
- ii. Copy to be retained by the physician;
- iii. Copy to patient or person who signed form for the patient;
- iv. Copy to pharmacist.

2. When amygdalin (laetrile) is utilized in the treatment of a malignancy, the diagnosis of malignancy shall be documented by a positive tissue diagnosis rendered by a qualified pathologist which shall include the size, location and type of malignancy. In the absence of tissue for diagnosis, the treating physician shall be required to obtain consultative and/or professional reports to support a positive diagnosis of a malignancy.

3. The alternative medically recognized and accepted form of therapy offered by a physician shall be thoroughly discussed with the patient and documented in writing.

(d) Complete and accurate records shall be maintained and made available to include:

1. Copy of signed informed request.
2. History of previous therapy to be included where indicated.
 - i. Surgery;
 - ii. Radiation;
 - iii. Chemotherapy.
3. Complete record of dates of office visits, examination and evaluation of patient with detailed progress notes.
 - i. Complications and/or untoward reactions from amygdalin (laetrile) shall be reported immediately to the State Department of Health.
 - ii. Fee for service: The patient record shall include fee charged per visit which fee shall not be greater than the physician's usual and customary fee for an office visit. When fee includes administering or dispensing amygdalin (laetrile), the change is to be itemized and recorded. When a physician administers or dispenses amygdalin (laetrile), the fee to the patient shall not exceed the cost to the physician of such substance and shall be so itemized in the charge or billing.
 - iii. Copies of all laboratory and follow-up examinations; and
 - iv. Periodical clinical measurements of tumor activity.

4. Date or procurement of amygdalin (laetrile), quantity, cost, name and address of manufacturer and supplier, batch number and expiration date when administered or dispensed by a physician.

5. Records are to be readily available without prior notice for inspection by the appropriate official agency, including, but not limited to the New Jersey Board of Medical Examiners and the New Jersey State Department of Health.

6. Copies of records shall be forwarded to State Department of Health at quarterly intervals.

(e) Solicitation is prohibited. Such prohibited activity shall include, but is not limited to, the dissemination of information concerning amygdalin (laetrile) which may be found by the Board of Medical Examiners as:

1. False, fraudulent, deceptive, misleading or flamboyant;
2. Using testimonials;
3. Guaranteeing that satisfaction or cure will result from the use of amygdalin (laetrile);
4. Making claims of professional superiority;
5. Stating fees for professional services which are false, deceptive and/or misleading.

(f) A licensed physician may, in the regular course of medical practice and pursuant to a justifiable medical basis, prescribe, administer, or dispense amygdalin (laetrile) in accordance with the Act concerning Laetrile (Chapter 318, P.L. 1977) and these rules and regulations.

As amended, R.1984 d.67, effective March 19, 1984.
See: 15 N.J.R. 2029(b), 16 N.J.R. 552(a).
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.

13:35-6.9 Referral for radiological services

(a) "Physician" shall mean a physician possessing a plenary license to practice medicine and surgery and practitioners legally licensed to practice chiropractic or podiatry.

(b) A physician possessing a plenary license to practice medicine and surgery who provides diagnostic radiological services for other physicians possessing a plenary license to practice medicine and surgery shall, upon the request of a chiropractic or podiatric physician, provide diagnostic radiological services to such chiropractic or podiatric physician without discrimination on the basis of classification of license, provided the diagnostic radiological services requested pertain to skeletal areas of the body.

(c) Denial of professional diagnostic radiological services, as set forth herein, shall constitute purposeful and intentional discrimination and shall subject the licensee to appropriate disciplinary action by the Board of Medical Examiners.

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

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

Added reference to podiatric services.

Case Notes

Rule valid as within statutory power and duties of Board to regulate practice of medicine, surgery and chiropractic and to secure patients the expert diagnostic radiological services referred to therein (cited as N.J.A.C. 13:35-6.18). *Brodie v. New Jersey Bd. of Medical Examiners*, 177 N.J.Super. 523, 427 A.2d 104 (App.Div.1981) certification denied 87 N.J. 386, 434 A.2d 1068 (1981).

13:35-6.10 Advertising and solicitation practices

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

1. The term "advertisement" shall mean any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to purchase or enter into an agreement to purchase services, treatment, or goods related thereto from a Board licensee.

2. "Board licensee" shall mean any individual holding a license issued by the State Board of Medical Examiners.

3. The term "routine professional service" shall refer to a service which a board licensee or professional association routinely performs.

4. The term "print media" shall include newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, matchcovers and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed word.

5. The term "electronic media" shall include radio, television, and Internet.

6. The term "range of fees" shall refer to any expressly stated upper and lower limit on the fees charged for services or goods offered by a Board licensee.

7. The term "graphic representation" shall mean the use of drawings, animations, clinical photographs, dramatizations, music or lyrics.

(b) A Board licensee may provide information to the public by advertising in print or electronic media.

(c) A Board licensee who engages in the use of advertising which contains any of the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim or format including, but not limited to, a graphic representation, which is false, fraudulent, misleading or deceptive;

2. Any misrepresentation of a material fact;

3. The suppression, omission or concealment of any material fact under circumstances which a Board licensee

knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement;

4. Any claim that the service performed or the materials used are superior to that which is ordinarily performed or used in the profession;

5. Any promotion of a professional service which the Board licensee knows or should know is beyond the licensee's ability to perform;

6. A technique or communication which appears to intimidate, exert undue pressure or to unduly influence a prospective patient or consumer;

7. Any personal testimonial attesting to the quality or competence of a service or treatment by a licensee involving medical or technical assessments which are beyond the patient's competency to assess, or any testimonial not in compliance with (n) below;

8. The communication of any fact, data or information which may personally identify a patient without that patient's signed written permission obtained in advance;

9. An offer to pay, give or accept a fee or other consideration to or from a third party for the referral of a patient;

10. Any print, language or format which directly or indirectly obscures a material fact;

11. Any guarantee of results from any procedure is prohibited;

12. Any violations of (d) through (n) below.

(d) The licensing board may require a licensee to substantiate the truthfulness of any assertion or representation set forth in an advertisement. Failure of a Board licensee to provide factual substantiation to support a representation or assertion shall be deemed professional misconduct.

(e) A Board licensee shall not engage either directly or through the use of any agent, employee or representative in in-person solicitation with a prospective patient or consumer. This subsection shall not prohibit a licensee from offering services through materials provided to a community service organization which makes known the availability of all professional services desiring to be listed; nor shall it prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not limited to, employers, labor union representatives, or insurance carriers.

(f) Advertising making reference to or setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for specifically described routine professional services or goods offered by licensees.

1. A Board licensee who advertises fees shall disclose all relevant and material variables and considerations which are ordinarily included in such a service so that the fee will be clearly understood by prospective patients or consumers.

2. In the absence of such disclosure referred to in (f)1 above, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement includes a specific delineation of additional services contemplated in the fee to be charged therefor.

(g) The requirements for advertising free or discounted services are as follows:

1. An advertisement offering a fee reduction shall state the reduced fee or range of fees and the physician's usual fee or range of fees for each service for which a reduction is advertised. The reference fee required in this subsection shall have been the usual fee charged for the advertised service for a period of not less than 90 days prior to the advertised reduction.

2. All offers of free services or discounts shall include a statement of the specific charges for all associated or reasonably anticipated services which are not included in the offer of free or discounted services. If the discount or free service does not apply to all services to be rendered, the advertisement shall specify any associated or reasonably anticipated services which are not included (for example, free eye screening for senior citizens does not include charges for refraction, eyeglasses and contact lens fitting).

3. The licensee shall maintain a list of the patient names and dates of service for all patients for whom he or she has provided free or discounted services. The list may be maintained as part of the physician's appointment book as long as the patient receiving free or discounted services is identifiable. The list shall be maintained for seven years from the date of last entry except in the case of massive screening programs performed off-site (out of the office) as a community service, and which are sponsored by a governmental or non-profit organization.

4. Any person offering free or discounted medical services shall file copies of any such advertisement with the Board within 30 days of initial publication. The Board's acceptance for filing of such an advertisement shall not be deemed approval of the advertisement's content.

5. Any offer of free or discounted diagnostic services shall include the providing of results to the patient or a designated licensee or duly authorized representative within 30 days of a written request by the patient or duly authorized representative.

6. A patient record shall be maintained for all discounted or free services for seven years from the date of last entry except in the case of massive screening programs done off-site (out of the office) as a community service, and which are sponsored by a governmental or non-profit organization.

7. The patient record maintained shall be made available upon patient request to the same extent as under the Board's patient record rule (N.J.A.C. 13:35-6.5), and the patient shall be advised at the time the service is rendered that the record will be available to him or her.

8. Except for those services specifically excluded in the advertisement offering free services, the physician shall not charge for any service whatsoever rendered during a period of 72 hours from the time the free service was rendered.

(h) The name and nature of professional practice of every licensee practicing independently or as an employee of another licensee or of a professional service corporation shall appear on professional stationery and shall be conspicuously displayed and kept at the entrance of the place where the licensed practice is conducted. The name of every licensee employed by an ambulatory health care facility licensed by the New Jersey Department of Health shall be posted at the entrance to the treatment area and the licensee providing professional services shall be identified on the bill and insurance claim form.

(i) The responsibility for the form and content of any advertisement offering services or goods by a Board licensee shall be jointly and severally that of each Board licensee who is a principal, partner or officer of the firm or entity identified in the advertisement.

(j) The time period during which an advertised fee will remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure, the effective period shall be deemed to be 30 days from the date of the advertisement's final publication.

(k) A video or audio tape of every advertisement communicated by electronic media shall be retained by the Board licensee and shall be made available for review upon request by the Board or its designee. A copy of any advertisement appearing in the print media shall also be retained by the licensee and made available for review. The tapes and print media copies required to be retained by this subsection, shall be kept for a period of three years from the date of the last authorized publication or dissemination of the advertisement.

(l) All Board licensee advertisements and public representations intended to be displayed or circulated away from the office premises, including telephone directory advertisements, may, if desired, list the professional service corporation or trade name under which the practice is conducted but shall disclose the nature of the practice, and the name and address or telephone number of at least one of the principal practitioners. This requirement does not apply to licensees employed by an ambulatory health care facility licensed by the New Jersey State Department of Health.

(m) Any licensee advertising board certification in a specialty shall possess current certification by a specialty board or certifying entity. Specialty boards recognized by the American Board of Medical Specialties (ABMS), the American Osteopathic Association (AOA), and/or the American Podiatric Medicine Association (APMA) shall be approved by the Board and included in a list maintained by the Board. A licensee advertising board certification shall conspicuously specify in the advertisement the specific specialty board or certifying entity granting the certification (for example, the American Board of Psychiatry and Neurology, the American Board of Radiology, etc.), the national organization recognizing such specialty board or certifying entity (for example, ABMS, AOA, APMA, etc.), if any, and, if not included in the name of the specialty board or certifying entity itself, the field of medical or surgical specialty in which the certification was conferred.

(n) The requirements for testimonial advertisements are as follows:

1. All testimonials involving a specific or identifiable procedure shall truthfully reflect the actual experience of the patient and shall include the following conspicuously displayed statements:

i. "This procedure may not be suitable for every patient. All patients must be evaluated by a physician as to the appropriateness of performing the procedure".

ii. "The above testimonial represents the individual's response and reaction to the procedure; however, no medical procedure is risk-free. Associated potential risks and complications should be discussed with the physician rendering this procedure".

2. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL."

3. A physician who advertises through the use of testimonials shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation and a signed, notarized statement and release verifying the truthfulness of the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement obtained prior to the time the testimonial is advertised.

4. Any guarantee of results from any procedure is prohibited.

(o) Nothing contained in this section shall be construed to prohibit the licensing board from adopting additional

rules concerning advertising by Board licensees. To the extent that any conflict or inconsistency may arise between the provisions of this section and any subsequently adopted rule dealing more specifically with the same subject matter as set forth, such subsequent adopted rule shall control.

R.1984 d.139, effective April 16, 1984.

See: 16 N.J.R. 32(a), 16 N.J.R. 921(a).

A rule entitled "Advertising and Solicitation" formerly at this cite was repealed and replaced.

Amended, R.1984 d.372, effective August 20, 1984.

See: 16 N.J.R. 1026(b), 16 N.J.R. 2286(a).

Subsection (m) new.

Amended by R.1986 d.467, effective December 1, 1986.

See: 18 N.J.R. 1788(d), 18 N.J.R. 2390(a).

Text added to (h) and (l).

Amended by R.1989 d.325, effective June 19, 1989.

See: 21 N.J.R. 696(a), 21 N.J.R. 1710(b).

In (a): deleted "Definitions" and added new 7 regarding graphic representation. Revised language throughout to modify an existing prohibition on use of testimonials, discounts and offering of free services.

Added new (c)11 and 12, deleting old (c)11.

Added new (g)1-8 and new (m) and (n), recodifying old "n" as new "o".

Amended by R.1994 d.329, effective July 5, 1994.

See: 26 N.J.R. 1219(b), 26 N.J.R. 2795(c).

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.356, effective October 18, 1999.

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

In (a)5, added a reference to the Internet.

Amended by R.2005 d.120, effective April 18, 2005.

See: 36 N.J.R. 4633(a), 37 N.J.R. 1203(a).

Rewrote (m).

Case Notes

Abstention; action by podiatrist association challenging constitutionality of regulation restricting medical professionals' advertising of board certification. *American Institute of Foot Medicine v. New Jersey State Bd. of Medical Examiners*, D.N.J.1992, 807 F.Supp. 1170.

Former N.J.A.C. 13:35-4.1 and 13:35-6.13 requiring degree designations on licenses and regulating advertising, respectively, held invalid as outside Board's authority under the Medical Practices Act. *Eatough v. Bd. of Medical Examiners*, 191 N.J.Super. 166, 465 A.2d 934 (App.Div. 1983).

13:35-6.11 Excessive fees

(a) The Board of Medical Examiners shall review information and complaints concerning allegations of excessive fees charged by licensees of the Board and may establish Excessive Fee Review Committees to perform various aspects of the review function. This regulation is not intended to impinge upon the strong public policy in favor of a competitive, free enterprise economy embodied in the anti-trust laws of the United States and of this State. Excessive Fee Review Committees shall consider comparable fees charged by licensees not under inquiry only to the minimum extent necessary to render a determination as to whether a fee is excessive.

(b) A licensee of the Board of Medical Examiners shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction

that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances.

(c) Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty and difficulty of the procedure or treatment;
3. The skill required to perform the procedure or treatment properly;
4. Any requirements or conditions imposed by the patient or by the circumstances;
5. The nature and length of the professional relationship with the patient;
6. The experience, reputation and ability of the licensee performing the services;
7. The nature and circumstances under which services are provided. Unless services are provided during an emergency or other circumstances where opportunity, custom and practice will preclude discussion prior to the rendition of such services, the licensee shall, in advance of providing services, specify or discuss and agree with the patient, the fee or basis for determination of the fee to be charged.

(d) Charging an excessive fee in violation of (b) above shall constitute professional misconduct subjecting the licensee to disciplinary action by the Board of Medical Examiners.

Amended by R.1989 d.532, effective October 16, 1989.
See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a).
(c)4 deleted, 5-8 recodified to 4-7.

Case Notes

Physician found guilty by New York Board of Regents properly had New Jersey medical license revoked. In the Matter of the Suspension or Revocation of the License of Del Gizzo, 94 N.J.A.R.2d (BDS) 1.

13:35-6.12 (Reserved)

Amended by R.1989 d.532, effective October 16, 1989.
See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a).
Superfluous language deleted from (f).

Repealed by R.1994 d.522, effective October 17, 1994.
See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a).
Section was "Excessive fee review committees".

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)
 - i. Initial application fee \$325.00
 - ii. Initial license fee
 - (1) If paid during the first year of a biennial renewal period 580.00

	(2) If paid during the second year of a biennial renewal period	290.00
iii.	N.J.S.A. 45:9-21(n)—exemption	225.00
iv.	N.J.S.A. 45:9-21(b)—temporary license	50.00
v.	Endorsement	225.00
vi.	Biennial license	580.00
vii.	Biennial license for licensee over 65 without health care facility or HMO affiliation	125.00
viii.	Permit	50.00
2.	Podiatry (license)	
i.	Application fee	125.00
ii.	Examination	150.00
iii.	Initial license fee <ol style="list-style-type: none"> (1) If paid during the first year of a biennial renewal period 410.00 (2) If paid during the second year of a biennial renewal period 205.00 	
iv.	Endorsement	150.00
v.	Biennial license	410.00
vi.	Biennial license for licensee over 65 without health care facility or HMO affiliation	85.00
vii.	Permit	50.00
3.	Bioanalytical laboratory directorship, plenary license	
i.	Application fee	125.00
ii.	Examination	350.00
iii.	Exemption	150.00
iv.	Initial license fee <ol style="list-style-type: none"> (1) If paid during the first year of a biennial renewal period 270.00 (2) If paid during the second year of a biennial renewal period 135.00 	
v.	Biennial license	270.00
4.	Midwifery (license)	
i.	Application fee	125.00
ii.	Examination	50.00
iii.	Endorsement	50.00
iv.	Initial license fee <ol style="list-style-type: none"> (1) If paid during the first year of a biennial renewal period 270.00 (2) If paid during the second year of a biennial renewal period 135.00 	
v.	Biennial license	270.00
vi.	Biennial prescriptive authorization (Certified Nurse Midwife)	50.00
5.	Physician assistant (license)	
i.	Application fee	\$125.00
ii.	Temporary license fee	50.00
iii.	Initial license fee <ol style="list-style-type: none"> (1) If paid during the first year of a biennial renewal period 220.00 (2) If paid during the second year of a biennial renewal period 110.00 	
iv.	License renewal fee, biennial	220.00
v.	Late renewal fee	100.00
vi.	Reinstatement fee	175.00
vii.	Duplicate license fee	40.00
viii.	Duplicate wall certificate	50.00
6.	General	
i.	Recording of name change and issuance of replacement license	50.00
ii.	Replacement of lost engrossed copy/certified true copy/biennial registration certificate	50.00
iii.	Preparation of certification papers for applicants to other states	50.00
iv.	Late renewal fee	100.00
v.	Reinstatement fee	175.00
vi.	Inactive license fee	(to be determined by Director by regulation)

New Rule, R.1983 d.510, effective November 7, 1983.
See: 15 N.J.R. 784(a), 15 N.J.R. 1865(e).
Deleted old fee schedule and added new fee schedule.
Amended by R.1985 d.223, effective May 6, 1985.

See: 17 N.J.R. 562(a), 17 N.J.R. 1132(a).

Substantially amended.

Amended by R.1987 d.201, effective May 4, 1987.

See: 19 N.J.R. 353(a), 19 N.J.R. 772(a).

Both components raised from \$300.00 to \$425.00; Component I raised from \$200.00 to \$250.00 and Component II raised from \$225.00 to \$300.00.

Amended by R.1987 d.371, effective September 8, 1987.

See: 19 N.J.R. 1054(a), 19 N.J.R. 1648(a).

Increased the biennial registration fee.

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

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

Biennial registration fee decreased from \$120 to \$60 and endorsement fee set at \$60.

Amended by R.1990 d.525, effective November 5, 1990.

See: 22 N.J.R. 1988(a), 22 N.J.R. 3384(a).

Medicine and surgery examination fees increased.

Amended by R.1991 d.286, effective June 3, 1991.

See: 23 N.J.R. 833(a), 23 N.J.R. 1815(a).

Added (a)lviii and (a)2v.

Deleted (a)2 [Chiropractic (license)]; redesignated existing (a)3 through 11 as (a)2 through 10.

Changed fees in (a)1 through 8.

Amended by R.1993 d.91, effective February 16, 1993.

See: 24 N.J.R. 4011(a), 25 N.J.R. 708(a).

Revised (a)1 through 4.

Amended by R.1993 d.92, effective February 16, 1993.

See: 24 N.J.R. 4334(a), 25 N.J.R. 709(a).

Added new (a)10; redesignated old (a)10 to (a)11.

Amended by R.1993 d.260, effective June 7, 1993.

See: 25 N.J.R. 1058(a), 25 N.J.R. 2487(a).

Amended by R.1993 d.299, effective June 21, 1993.

See: 24 N.J.R. 4013(a), 25 N.J.R. 2689(c).

Amended by R.1994 d.170, effective April 4, 1994.

See: 25 N.J.R. 4583(a), 26 N.J.R. 1520(a).

Administrative Correction.

See: 26 N.J.R. 2589(b).

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.330, effective June 19, 1995.

See: 27 N.J.R. 640(a) (see also, 27 N.J.R. 1746(a)), 27 N.J.R. 2410(a).

Increased some of the fees.

Amended by R.1995 d.423, effective August 7, 1995.

See: 27 N.J.R. 1526(a), 27 N.J.R. 2959(a).

Added Physician Assistant temporary license fee at (a)8.ii.

Administrative correction.

See: 33 N.J.R. 1411(a).

Amended by R.2005 d.120, effective April 18, 2005.

See: 36 N.J.R. 4633(a), 37 N.J.R. 1203(a).

Rewrote the section.

Amended by R.2005 d.175, effective June 6, 2005.

See: 37 N.J.R. 206(a), 37 N.J.R. 1203(a), 37 N.J.R. 2041(b).

In (a), increased the fees in 1ii(1), 1ii(2), 1vi, 2iii(1), 2iii(2), 2v, 3iv(1), 3iv(2), 3v, 5iv(1), 5iv(2) and 5v.

Administrative correction.

See: 37 N.J.R. 2553(a).

Case Notes

Degree designation on license. *Eatough v. Albano*, 673 F.2d 671 (1982) certiorari denied 102 S.Ct. 2931, 457 U.S. 1119, 73 L.Ed.2d 1331, see: dissenting opinion.

Preliminary injunction against rule. *Davis v. Board of Medical Examiners*, 497 F. Supp. 525 (1980).

13:35-6.14 Delegation of physical modalities to a licensed health care provider or an unlicensed physician aide

(a) "Physician," for the purpose of this section, shall mean a doctor of medicine (M.D.), a doctor of osteopathic medicine (D.O.) or a doctor of podiatric medicine (D.P.M.).

1. "Licensed health care provider," for the purpose of this section, shall mean an individual holding a current, valid license in this State as a physical therapist, registered nurse, licensed practical nurse, physician assistant, chiropractor or athletic trainer.

(b) A physician may direct his or her unlicensed employee to administer to the doctor's patients certain physical modalities in the limited circumstances set forth in this section, without being in violation of the pertinent professional practice act implemented by the Board, to the extent such conduct is permissible under any other pertinent law or rule administered by the Board or any other State agency.

(c) A physician may direct a licensed health care provider with training and experience to administer to the physician's patients physical modalities including ultraviolet (B and C bands) and electromagnetic rays including, but not limited to, deep heating agents, microwave diathermy, shotwave diathermy, ultrasound, and those modalities listed in (d) below. The physician shall retain responsibility for examining the patient, determining the appropriate modalities, assessing training and experience, as well as providing the appropriate level of supervision consistent with practice standards, applicable to the specific licensed health care provider.

(d) A physician may direct an unlicensed aide to administer the following physical modalities: hot packs, cold packs, paraffin baths, contrast baths, and whirlpool baths. The aide shall not be permitted to perform any rehabilitative exercise programs. No other modalities including T.E.N.S. or traction shall be performed by the unlicensed physician's aide.

(e) A physician may direct the administration of an appropriate physical modality by an unlicensed assistant only where the following conditions are satisfied:

1. The doctor shall examine the patient to ascertain the nature of the trauma or disease; to determine whether the application of a physical modality will encourage the alleviation of pain and promotion of healing; to assess the risks of the modality for a given patient and the diagnosed injury or disease and to decide that the anticipated benefits are likely to outweigh those risks.

2. The doctor shall determine all the components of the precise treatment to be given at the present therapy session, including the type of modality to be used, extent of area to which it shall be applied, the length of treatment, and any other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body. This information shall be written on the patient's chart and made available at all times to the assistant carrying out the instructions. The doctor shall assure that the aide administering the treatment is identified in the patient chart on each such occasion.

3. The doctor shall ascertain a satisfactory level of education, competence and comprehension of the particular assistant, who shall be at least 18 years of age, to whom instruction has been given by the doctor as to modalities used in that office. The doctor shall prepare and maintain a written document certifying as to the instructions given to each assistant, and both doctor and assistant shall sign it.

4. The doctor shall see the patient prior to any subsequent scheduled application of the modality to ascertain that continued treatment is appropriate and that no contraindications to treatment have become apparent.

5. The doctor shall remain on the premises at all times that treatment orders are being carried out by the assistant and shall be within reasonable proximity to the treatment room and available in the event of emergency.

(f) A physician shall have due regard for the specialized training and experience of registered physical therapists, and of physiatrists and orthopedists. Injuries or diseases requiring prolonged treatment, if not administered personally by the doctor, shall normally be referred to a licensed physical therapist, to a physiatrist, orthopedist or other appropriate health care provider.

(g) A bill rendered for the limited consultation set forth in (d)4 above shall not exceed a sum which reasonably reflects the actual level of service, supervision and responsibility personally rendered by the doctor, and consistent with the factors listed in the rule prohibiting excessive fees, N.J.A.C. 13:35-6.11(b) and (c).

(h) On a health insurance claim form pertaining to such service and requiring certification by the doctor, the doctor shall specify the modality applied and shall not generically identify physical therapy.

New Rule, R.1985 d.159, effective April 1, 1985.

See: 16 N.J.R. 2065(a), 17 N.J.R. 836(a).

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

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

Requirements added that aides be identified on the patient Chart and that the aides be at least 18 years of age.

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

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

Case Notes

Rule was not ultra vires as to the Board of Medical Examiners on theory that authority rested solely with the Board of Physical Therapists. Matter of Promulgation of N.J.A.C. 13:35-6.14, 205 N.J.Super. 492, 501 A.2d 547 (App.Div.1985).

13:35-6.15 Continuing medical education

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

“Category I” and “Category II” mean the categories of medical education courses recognized by the American Medical Association as credited toward the Physician Recognition Award, and those categories of medical education courses recognized by the American Osteopathic Association or the American Podiatric Medical Association.

“Licensee” means a physician or podiatrist licensed and subject to regulation by the Board of Medical Examiners (the “Board”).

(b) Except as provided in (b)1 and 2 and (c) below, a licensee applying for a biennial license renewal shall complete, in each biennial renewal period commencing with the biennial renewal period beginning on July 1, 2003, 100 continuing medical education credits in Category I or Category II courses, of which at least 40 of such credits shall be in Category I.

1. A licensee shall be required to complete 50 continuing medical education credits for the biennial renewal period beginning on July 1, 2003, if this section becomes effective on or before July 1, 2004, of which at least 20 credits shall be in Category I courses.

i. A licensee who completes credits in excess of the 50 continuing medical education credits required pursuant to (b)1 above may apply no more than 25 of the excess credits to the continuing medical education requirements for the following biennial period only.

2. A licensee shall be exempt from the continuing medical education requirements for the biennial renewal period beginning on July 1, 2003, if this section becomes effective after July 1, 2004.

(c) An applicant for initial licensure who has completed an accredited graduate medical education program within 12 months prior to licensure shall be exempt from the continuing medical education requirements of this section for the initial biennial period of licensure. Notwithstanding such exemption from the continuing medical education requirements, the applicant, once licensed by the Board, shall complete, within 24 months of becoming licensed, an orientation course which is presented or approved by the Board.

(d) A licensee shall certify on the application for biennial licensure renewal that he or she has completed the required number of continuing medical education credits. The Board may conduct random audits to determine licensee compliance with the continuing medical education requirements of this section.

(e) A licensee who completes credits in excess of the 100 continuing medical education credits required pursuant to this section may apply no more than 25 of the excess credits to the continuing medical education requirements for the following biennial period only.

(f) Licensees holding an inactive or retired license shall be exempt from continuing medical education requirements, except that any licensee holding an inactive or retired license, or whose license is suspended or revoked, who applies to resume practice shall provide proof of having attained 50 credits of continuing medical education for each year out of practice in New Jersey. At least 50 credits shall have been obtained in the year preceding the application to resume practice. At the time of application to resume practice, the licensee shall provide proof of the completed continuing medical education during the period while out of practice in New Jersey. The Board may accept such continuing medical education credits or require additional credits as a condition to return to practice.

(g) The Board may delineate specific topics of medical education which the Board deems necessary to address a particular issue or problem. Notification of the specific topic(s) shall be through the Board newsletter, the Division of Consumer Affairs website or by direct communication to licensees.

(h) To report continuing medical education credits, a licensee shall:

1. Certify, on the application for biennial renewal, completion of the required number of continuing medical education credits; and
2. Maintain all evidence of verification of continuing medical education requirements for a period of six years after completion of the credits and submit such documentation to the Board upon request.

(i) The Board may extend the time period for completion of continuing medical education requirements or may waive continuing medical education requirements on an individual basis for reasons of hardship, such as severe illness, disability or military service, consistent with the following:

1. A licensee seeking an extension and/or waiver of the continuing medical education requirements shall apply to the Board in writing and set forth in specific detail the reasons for requesting the extension and/or waiver. The licensee shall submit to the Board all documentation in support of the extension and/or waiver;
2. A licensee shall apply for an extension and/or waiver within 60 days of the expiration of the biennial renewal period. All requests shall be sent to the Board office, by certified mail, return receipt requested; and
3. An extension and/or waiver granted pursuant to this section shall be effective for the biennial licensure period in which the extension and/or waiver is granted. If the condition(s) which necessitated the extension and/or waiver continues into the next biennial period, the licensee shall apply to the Board for the renewal of such extension and/or waiver for the new biennial period.

(j) A licensee shall provide verification and proof of compliance with continuing medical education requirements for the prior biennial renewal period when appearing before

an investigative committee of the Board or the Medical Practitioner Review Panel, or when required to do so pursuant to a Board Order, Directive or request.

(k) Failure to complete continuing medical education requirements or falsification of any information submitted on a renewal application shall provide cause for penalties and/or license suspension pursuant to N.J.S.A. 45:1-21.

New Rule, R.1991 d.56, effective February 4, 1991 (operative May 12, 1991).

See: 22 N.J.R. 2135(b), 23 N.J.R. 311(a).

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

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

Section was "Delegation of tasks to physician assistants".

New Rule, R.2004 d.232, effective June 21, 2004.

See: 36 N.J.R. 607(a), 36 N.J.R. 3057(b).

13:35-6.16 Professional practice structure

(a) A licensee of the Board of Medical Examiners shall engage in professional practice in this State only when in possession of a current biennial registration issued by the Board.

1. The term "professional practice" is deemed to include the offering by a Medical Board licensee of opinions on matters of professional practice (including testimony and professional review organization service), whether or not the offeror has provided direct patient care, where the holding of a professional board license is a significant component or foundation for the offering of the professional opinion.

2. The name of the professional practice entity shall be composed of the actual last names of one or more of the owning licensees, partners or shareholders or composed of a phrase or words reasonably descriptive of the type of professional practice.

(b) The practice shall be conducted in a business form consistent with the principles set forth in this rule and, where so noted, only in accordance with the designated special conditions pertaining to that form. There shall be policies and procedures with respect to professionally licensed personnel. These topics shall include, but not be limited to, the following:

1. Responsibility of a licensed practitioner for review and approval of hiring professional staff and timely demand for and verification of current licensing credentials and any other educational credentials required by law or pertinent agency rule (for example, recertifications, continuing professional education, cardiopulmonary resuscitation, etc.);
2. Medical policies at the office or place where services shall be rendered;
3. Cleanliness of premises;
4. Maintenance, registration and inspection of professional equipment as necessary;
5. Standards for recordkeeping as to patient medical records, billing records, and such other records as may be required by law or rule including Controlled Dangerous Substance inventories, as applicable;

6. Security, including drug storage, prescription pad control, confidentiality of patient records;

7. Periodic audit of patient records and of professional services to assure quality professional care on the premises;

8. Responsibility for the professional propriety of billing and of advertising or other representations including disclosure of financial interest in health care services offered to the public; and

9. Preparation and maintenance of a written list of current fees for standard services, which list shall be available to patients on request.

(c) The licensee shall post a conspicuous notice in the waiting room stating: "INFORMATION ON PROFESSIONAL FEES IS AVAILABLE TO YOU ON REQUEST."

(d) A licensee, alone or with the other investing licensees, may employ a licensed health care professional as director of the professional entity to carry out those policies and procedures designated by the licensee(s). The director must be licensed to conduct all services offered at the premises. Either the director, one of the investing licensees, or another licensed health care professional authorized to render those medical services without direct supervision, must be on the premises at all times when patients or clients are receiving professional services, except as specified herein or otherwise permitted by rule of the Board. With regard to health care entities whose services are performed away from the primary office address (for example, entities providing house calls, mobile medical services, or provision and management of services relating to durable medical equipment, etc.), the director need not be present at all times, provided that patients or clients are receiving professional services from an investing or employed professional who is a licensee of a professional health care board of this State, except as may be limited by law or by another rule of this Board.

(e) A licensee may invest in a health care service as defined in N.J.A.C. 13:35-6.17(a). Said service shall be owned solely by one or more licensed health care professionals except as otherwise permitted by licensure granted by another State agency. Whether or not any or all of the owners, partners or directors all regularly practice on the premises or within the entity, each such person who is a licensee of this Board shall be responsible to the Board for requiring maintenance of all professional practice standards and control set forth in this rule, except as excused by (g) below. A licensee who has invested in a health care service in which he or she has a significant beneficial interest as defined in N.J.A.C. 13:35-6.17(a)5, to which he or she refers patients, shall assure that professional justification for the referred service is documented in the patient record maintained at that entity. Referred services include but are not limited to prescriptions for devices such as hearing aids, eyeglasses, intraocular lenses, requests for radiologic studies, etc. Referral of patients is now limited to the exceptions set forth in N.J.S.A. 45:9-22.4 as amended.

(f) Acceptable professional practice forms are as follows:

1. Solo: A practitioner may practice solo and/or may employ or otherwise remunerate other licensed practitioners to render professional services within the scope of practice of each employee's license, but which scope shall not exceed that of the employer's license. The practitioner may employ ancillary non-licensed staff in accordance with Board rules, if any, and accepted standards of practice.

2. Partnership, professional association or limited liability company: A practitioner may practice in a partnership, professional association, or limited liability company, but such entity shall be composed solely of health care professionals, each of whom is duly licensed or otherwise authorized to render the same or closely allied professional service within this State. A limited liability company means a limited liability company formed under the laws of this State, pursuant to the New Jersey Limited Liability Company Act, N.J.S.A. 42:2B-1 et seq., except where inconsistent with these rules. A practitioner who is a member, employee, agent, or representative of the limited liability company shall remain personally responsible for his or her own negligence, wrongful acts, or misconduct, and that of any person under his or her direct supervision and control while rendering professional services on behalf of the limited liability company in this State to the person for whom such professional service was being rendered. The professional services offered by each practitioner, whether a partner, member or shareholder, shall be the same or in a closely allied medical or professional health care field. For the purpose of this rule, closely allied fields, pursuant to the Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., shall be deemed to include the health care professions licensed by the State Professional Boards under the Division of Consumer Affairs, for example, chiropractic, dentistry, nursing, nurse midwifery, optometry, physical therapy, podiatry, psychology, social work, etc. If the scope of practice authorized by law for each such person differs, any document used in connection with professional practice including, but not limited to, professional stationery, business cards, advertisements or listings and bills, shall designate the field to which such person's practice is limited. Prescriptions shall list only those practitioners authorized by law to prescribe; shall designate the practice of each listed prescriber as required by N.J.A.C. 13:35-6.1; and shall comply with the data requirements of N.J.A.C. 13:35-6.6.

3. Associational relationship with other practitioner or professional entity: For the purpose of this rule, the term "employment" shall include an ongoing associational relationship between a licensee and professional practitioner(s) or entity on the professional practice premises for the provision of professional services, whether the licensee is denominated as an employee or independent contractor, for any form of remuneration.

i. A practitioner may be employed, as so defined, within the scope of the practitioner's licensed practice and in circumstances where quality control of the employee's professional practice can be and is lawfully supervised and evaluated by the employing practitioner. Thus, a practitioner with a plenary license shall not be employed by a practitioner with a limited scope of license, nor shall a practitioner with a limited license be employed by a practitioner with a more limited form of limited license. By way of example, a physician with a plenary license may be employed by another plenary licensed physician, but an M.D. or D.O. may not be employed by a podiatrist (D.P.M.) or chiropractor (D.C.) or midwife or certified nurse midwife (R.M., C.N.M.). A podiatrist may not employ a chiropractor. This section shall not preclude any licensee from employing licensed personnel such as nurses, x-ray technologists, physical therapists, ophthalmic dispensers and ophthalmic technicians, etc., as appropriate to the primary practice of the employer.

4. Shareholder or employee of a general business corporation: A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated medical director licensed in this State who is regularly on the premises and who (alone or with other persons authorized by the State Department of Health, if applicable) is responsible for licensure credentialing and provision of medical services.

i. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short-term care facility, ambulatory care facility or other type of health care facility or health care provider such as a diagnostic imaging facility. The above may include a licensed facility which is a component part of a for-profit corporation employing or otherwise remunerating licensed physicians.

ii. The corporation is not in the business of offering treatment services but maintains a medical clinic for the purpose of providing first aid to customers or employees and/or for monitoring the health environment of employees. The provisions of N.J.A.C. 13:35-6.5 regarding preparation, maintenance and release of treatment and health monitoring records shall apply to persons receiving care or evaluation in this setting.

iii. The corporation is a non-profit corporation sponsored by a union, social or religious or fraternal-type organization providing health care services to members only.

iv. The corporation is an accredited educational institution which maintains a medical clinic for health care service to students and faculty.

v. The corporation is licensed by the State Department of Insurance as an insurance carrier offering coverage for medical treatment and the licensee is employed to perform quality assurance services for the insurance carrier.

5. A licensee may also have an equity or employment interest in a professional practice (including a professional service corporation or limited liability company) which is a limited partner to a general business corporation which, in turn, has a contractual agreement with the professional service entity, in the following circumstances only. The general business corporation may contract to provide the professional practice with services exclusively of a non-professional nature such as, but not limited to, routine office management, hiring of non-professional staff, provision of office space and/or equipment and servicing thereof, and billing services. The licensee shall nevertheless be responsible, at all times except as excused by (g) below, to assure that an appropriate licensed health care professional determines and carries out all services and medical care policies set forth in (b) and (c) above, including retention of sole discretion regarding establishment of patient fees and modification or waiver thereof in an individual case. The licensee shall assure, as a condition of such contractual arrangement, that the general business corporation makes no representations to the public of offering, under its own corporate name, health care services which require licensure.

(g) A licensee employed or having a significant beneficial interest in any of the practice forms listed in (f) above shall terminate such employment or sever professional affiliation upon acquiring personal knowledge that the entity regularly fails to provide or observe the quality control/assurance mechanisms listed in (b) and (c) above and refuses, upon request, to implement such mechanisms. A licensee terminating employment or affiliation with a general business corporation as described in (f)4 above for reasons required by this section shall so notify the Board.

(h) In addition to the practice forms set forth above, a licensee may participate in organized managed health care plans including, but not limited to, those involving wholly or partially pre-paid medical services. By way of example, this includes plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical plans, individual practice associations, or other similar designations. Such plans typically cover certain types of health care services but only when the services are rendered by licensees who are provider-members of the plan; or the patient has been referred to a specialist or admitted to a hospital by a provider-member and has secured the advance approval of the plan administration. Such plans usually permit coverage for referrals in situations of emergency or other special conditions. A licensee may participate in any such plan which complies with the following professional requirements:

1. The licensee retains authority at all times to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of each patient.

2. The licensee retains authority at all times to inform the patient of appropriate referrals to any other health care providers:

i. Whether or not those persons are provider-members of the plan; and

ii. Whether or not the plan covers the cost of service by such non-member providers to the patient.

3. Plan patients are informed that they may be personally responsible for the cost of treatment by a provider who is not a member-provider within the plan, or for treatment not having the approval of the plan administration.

4. Provisions for remuneration to the licensee shall not be inconsistent with the principles listed in N.J.A.C. 13:35-6.17(f).

(i) The following pertain to laboratory service:

1. A Board-licensed physician having a financial interest in a laboratory for the performance of bioanalytical tests may prescribe and/or perform such tests on the physician's primary medical office premises solely for the patients of the prescribing licensee. The licensee is responsible for establishing and maintaining a protocol for quality and cost control and for compliance with the provisions of the Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.26 et seq. Billing shall be done only in the name of the practitioner's medical office and in compliance with N.J.S.A. 45:1-10.

2. A Board-licensed physician having a financial interest in a laboratory offering services only to patients of the owning licensee(s) but conducted at a site other than the office premises of the owners shall assure that such laboratory has a director and that the laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act. The physician shall assure compliance with N.J.S.A. 45:1-10 and with N.J.S.A. 45:9-22.4 as amended, and the name of the laboratory shall be accompanied at all times by the name(s) of the owning licensee(s) except as authorized for media advertising pursuant to N.J.A.C. 13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991.

3. A Board licensee having a financial interest in a laboratory which accepts referrals from physicians who are not owners/investors shall assure that such laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act and is directed by a bioanalytical laboratory director licensed pursuant to N.J.S.A. 45:9-42 et seq. who shall establish and maintain quality and cost control. The physician shall assure compliance with N.J.S.A. 45:1-10 and with N.J.S.A. 45:9-22.4, as amended, and the name of the laboratory shall be accompanied at all times by the name(s) of the owning licensee(s), except as authorized for media advertising pursuant to N.J.A.C. 13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991.

(j) The following pertain to physical therapy:

1. A physician may perform and/or prescribe physical therapy to be administered in the physician's office. Billing shall be done only in the name used by the physician's office. A bill for services of a physician's employees, which were rendered by licensed professionals authorized to provide services without medical supervision, shall identify the provider of service by name and degree.

2. A physician having a financial interest in a physical therapy entity at a location other than the physician's office, whether conducted under the physician's name or under another name, shall establish quality control/assurance provisions as required by (b) and (c) above. The physician shall assure compliance with service provider identification in (j)1 above, and with N.J.S.A. 45:9-22.4, as amended, and the name of the entity shall be accompanied at all times by the name(s) of the owning licensee(s) except as authorized for media advertising pursuant to N.J.A.C. 13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991.

(k) The following pertain to radiology:

1. A physician may prescribe and/or perform radiologic services on the physician's office premises. Billing shall be done only in the name of the prescriber or office. Where reading of film is done by an outside consultant, see N.J.A.C. 13:35-6.17(c)3.

2. A physician having a financial interest in a radiologic service facility at a location other than the physician's fixed office premises, whether conducted under the physician's name or under another name, shall establish quality control/assurance provisions as required by (b) and (c) above. The physician shall assure compliance with N.J.S.A. 45:9-22.4, as amended, and the name of the facility shall be accompanied at all times by the name(s) of the licensee(s) except as authorized for media advertising by N.J.A.C. 13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991, or by a licensee having a financial interest in a facility offering radiation therapy pursuant to an oncological protocol.

(l) The following pertain to ophthalmology:

1. A physician may prescribe eyeglasses or external contact lenses and may offer to sell the devices. Billing shall be done only in the name of the physician or office. A bill for services of a physician's employees, which were rendered by licensed professionals authorized to provide services without medical supervision, shall identify the provider of service by name and degree.

2. A physician having a financial interest in a service entity for the selling of eyewear at a location other than the physician's office, conducted under the physician's name or another name, shall establish quality control/assurance provisions as required by (b) and (c) above. The physician shall assure compliance with service provider identification in (l)1 above, and with N.J.S.A. 45:9-22.4, as amended, and the name of the entity shall be accompanied at all times by the name(s) of the owning licensee(s) except as authorized for media advertising pursuant to N.J.A.C. 13:35-6.10(l). Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991.

(m) The provisions of this rule shall be operative on April 15, 1992, except that the requirements of managed health care plans in (h) above, and requirements of a director of laboratory in (i)2 and 3 above shall be operative April 15, 1993. Licensees who have been providing professional services in a business format which does not comply with the present codification of Board interpretation of permissible practice formats shall complete a transfer to an acceptable format as soon as possible but no later than October 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).

Amended by R.2005 d.193, effective June 20, 2005.

See: 36 N.J.R. 3499(a), 37 N.J.R. 2210(a).

In (f), rewrote 2 and inserted "or limited liability company" following "professional service corporation" in 5.

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).

Joint Physician-Chiropractor Practice in New Jersey. Markley S. Roderick, 154 N.J.L.J. 966 (1998).

Case Notes

Suspension of doctor's license appropriate; negligence and suspension in another state. In the Matter of the Suspension or Revocation of the License of Tjoa, 95 N.J.A.R.2d (BDS) 26.

Revocation of doctor's license proper; gross negligence. In the Matter of the Suspension or Revocation of the License of Cohen, 95 N.J.A.R.2d (BDS) 23.

Doctor's license revoked; failure to adhere to minimum standard of medical care appropriate for symptoms presented. Attorney General of New Jersey v. Metzler, 95 N.J.A.R.2d (BDS) 17.

Suspension of doctor's license appropriate; doctor was guilty of repeatedly harassing and distracting colleagues. In the Matter of the Suspension or Revocation of the License of Cham, 95 N.J.A.R.2d (BDS) 1.

13:35-6.17 Professional fees and investments, prohibition of kickbacks

(a) For the purposes of this rule, the following words and terms shall have the following meanings:

1. "Health care service" means a business entity which provides on an in-patient or out-patient basis: testing for or 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 includes, but is not limited to, a bioanalytical laboratory, pharmacy, home health care agency, home infusion therapy company, rehabilitation facility, nursing home, hospital, or a facility which provides radiologic or other diagnostic imaging services, physical therapy, ambulatory surgery, or ophthalmic services.

2. "Financial interest" means a monetary interest of any amount held by a practitioner personally or through immediate family, as defined herein, in a health care service to which the practitioner's patients are referred. It includes the offer or receipt, directly or indirectly, by the practitioner or immediate family of anything of more than negligible value as a result of a patient's purchase of a prescribed service, goods or device from the person or entity providing this. Except as set forth in (a)2i through vii below, "financial interest" includes a licensee's financial interest in a contractual arrangement with a licensed health care facility (such as a hospital, nursing home or clinic, etc.), whereby the licensee agrees to provide health care services on referral, for example, cardiac or radiologic diagnostic testing, to patients including those receiving Emergency Room care or inpatients or outpatients of the health care facility. "Financial interest" does not include the following:

i. A straight salary or an annual retainer which is not related to the volume of patients treated;

ii. A contractual arrangement with a licensed health care facility or health care service to provide non-clinical services such as quality assurance review, peer review, administrative or supervisory services, duties (other than hands-on care) of a department chair or medical director, or similar services;

iii. A contractual arrangement with a licensed health care facility to provide health care services to patients who are medically indigent, under which the facility pays the licensee reasonable fees for services rendered. For purposes of this rule, "medically indigent" patient means any patient meeting the requirements for indigency established by the State Medicaid program, by the Federal government for purposes of meeting Hill-Burton obligations, by the State Department of Health for purposes of reimbursing hospitals for uncompensated care, or by any other governmental program for purposes of providing health care to indigent individuals;

iv. A contractual arrangement (including a faculty practice plan) with a licensed health care facility to provide health care services to patients of the facility, under which the licensee agrees to accept payments from third party payors (plus any deductible or coinsurance amounts) as payment in full for such services; in

the absence of a third party payment mechanism, the licensee shall have agreed to provide such services at no charge or the facility shall have agreed to pay the licensee reasonable fees for services rendered;

v. A contractual arrangement with a licensed health care facility to provide health care services to patients of the facility, under which the contract establishes the maximum fees which can be charged for the services or the facility approves the licensee's fees in advance, and the services to be provided are part of the facility's normal utilization review process;

vi. A contractual arrangement with a licensed health care facility in connection with a residency or externship program conducted by the facility in affiliation with a medical school accredited by the American Council on Graduate Medical Education, the American Osteopathic Association or the American Podiatric Medicine Association under which the facility pays the licensee (either directly or through a professional corporation or nonprofit corporation or other appropriate entity) for administration, teaching, supervision and/or hands-on care, and under which the facility or licensee (directly or indirectly) bills patients and third party payors for hands-on care; or

vii. A contractual arrangement (either individually or through an individual practice association, competitive medical plan, or similar organization) with a licensed health care facility to provide health care services to the facility's employees and/or beneficiaries of the facility's health plan, and/or to provide services to eligible individuals pursuant to an agreement between the facility and a health maintenance organization, other managed health care organization, insurance company, union welfare plan, employers or other similar organizations.

3. "Immediate family" means the practitioner's spouse and children, the practitioner's siblings and parents, the practitioner's spouse's siblings and parents, and the spouses of the practitioner's children.

4. "Practitioner" means a physician, podiatrist, bioanalytical laboratory director or specialty laboratory director, acupuncturist, midwife, certified nurse midwife, physician assistant and all other categories of licensee now or henceforth under the jurisdiction of the State Board of Medical Examiners.

5. "Significant beneficial interest" means any financial interest including an equity or ownership interest in a practice or in a commercial entity holding itself out as offering health care service as defined in (a)1 above. This interest does not, however, include ownership of a building or component thereof wherein the space is leased, in writing, to a person or entity at the prevailing rate under a straight lease agreement (that is, a fixed fee for a fixed term), or any interest held in publicly traded securities.

6. "Grandfathered" means a personal attribute and status of an individual licensee derived from a significant beneficial interest in a health care service, held on or before July 30, 1991, which renders him or her exempt from the referral prohibitions set forth in N.J.S.A. 45:9-22.5. Those practitioners employed by or professionally affiliated with a grandfathered practitioner do not share the "grandfathered" status.

(b) A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest, unless the practitioner held the interest prior to July 31, 1991 and discloses that interest to the patient as required herein or as otherwise permitted in this rule. Such a practitioner shall be deemed to be grandfathered. If a licensee professionally affiliated with a grandfathered practitioner obtains a significant beneficial interest in the same health care service in which the grandfathered practitioner holds an interest, on or after July 31, 1991, that practitioner shall not refer patients to that service. A licensee professionally affiliated with a grandfathered practitioner who does not hold an interest in that health care service may refer patients to that service so long as all of the disclosure requirements set forth below are met. Disclosure shall be made by the practitioner in ways appropriate to the professional circumstances including conspicuous posting of a written disclosure form prepared as set forth below, at least 8½ by 11 inches in size, in the practitioner's waiting room in all office locations. The patient shall also be provided with a personal copy of the notice. The notice format shall be as follows:

Public law/rule of the State of New Jersey/Board of Medical Examiners mandates that a physician, podiatrist and all other licensees of the Board of Medical Examiners inform patients of any significant financial interest held in a health care service.

Accordingly, take notice that practitioners in this office do have a financial interest in the following health care service(s) to which patients are referred:

(LIST APPLICABLE HEALTH CARE SERVICES)

You may, of course, seek treatment at a health care service provider of your own choice. A listing of alternative health care service providers can be found in the classified section of your telephone directory under the appropriate heading.

1. In any inquiry regarding the applicability of the financial disclosure provisions of this rule, including the holding of a significant beneficial interest or exemption therefrom, the Board may require a Board licensee to submit financial and familial information sufficient to determine the financial interest in an investment.

2. With regard to durable medical equipment, a physician having a significant beneficial interest as defined in (a) above, who prescribes and refers a patient to a source for said product, shall provide the personal notice copy to a patient in any setting, including the practitioner's office

and prior to the time of patient discharge from a hospital, nursing home or free standing health care facility (for example, urgent care offices or ambulatory surgery centers).