

CHAPTER 35

BOARD OF MEDICAL EXAMINERS

Authority

N.J.S.A. 24:61-1 et seq. (P.L. 2009, c. 307); 26:6A-1 et seq., specifically 26:6A-4; 45:1-15.1; 45:9-2; and 45:9-37.115.

Source and Effective Date

R.2011 d.155, effective May 3, 2011. See: 42 N.J.R. 1310(a), 43 N.J.R. 1359(b).

Chapter Expiration Date

Chapter 35, Board of Medical Examiners, expires on May 3, 2018.

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Chapter 35, Board of Medical Examiners, was repealed and Chapter 35, Board of Medical Examiners, was adopted as new rules by R.1983 d.314, effective August 1, 1983.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 September 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Examiners, was readopted as R.1994 d.522, effective September 19, 1994, and Subchapter 7, Chiropractic Practice, was repealed by R.1994 d.522, effective October 17, 1994.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: 36 N.J.R. 4633(a), 37 N.J.R. 1203(a).

Subchapter 6A, Declarations of Death Upon the Basis of Neurological Criteria, was repealed and Subchapter 6A, Declarations of Death Upon the Basis of Neurological Criteria, was adopted as new rules by R.2007 d.120, effective May 7, 2007. See: 38 N.J.R. 2021(a), 39 N.J.R. 1751(a).

Subchapter 1, Medical Schools, Colleges, Externships, Clerkships and Post-Graduate Work, was renamed Medical Schools, Colleges, Externships and Clerkships; and Subchapter 3, Licensing Examinations and Endorsements, Limited Exemptions from Licensure Requirements, was renamed Licensing Examinations and Endorsements, Limited Exemptions from Licensure Requirements; Post-Graduate Training by R.2008 d.100, effective April 21, 2008. See: 39 N.J.R. 3876(a), 40 N.J.R. 2115(a).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from March 17, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 1310(a).

Chapter 35, Board of Medical Examiners, was readopted as R.2011 d.155, effective May 3, 2011. As a part of R.2011 d.155, Subchapter 1A, Standards for New Jersey Clinical Training Programs Sponsored by Medical Schools Not Eligible for Evaluation and Not Approved by the L.C.M.E., the A.O.A. or Other Agency Recognized by the New Jersey State Board of Medical Examiners, was repealed; and Subchapter 4A, Surgery, Special Procedures, and Anesthesia Services Performed in an Office Setting, was renamed Surgery, Special Procedures and Anesthesia Services Performed in an Office Setting, effective June 6, 2011. See: Source and Effective Date. See, also, section annotations.

Subchapter 7A, Compassionate Use Medical Marijuana, was adopted as new rules by R.2011 d.292, effective December 5, 2011. See: 42 N.J.R. 2728(a), 43 N.J.R. 3191(b).

Subchapter 14, Genetic Counseling Advisory Committee, was adopted as new rules by R.2013 d.136, effective December 2, 2013 (operative March 2, 2014). See: 44 N.J.R. 2447(a), 45 N.J.R. 734(a), 45 N.J.R. 2478(c).

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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13:35-2B.17 Licensure; biennial license renewal; license suspension; reinstatement of suspended license; inactive status; return from inactive status

(a) All licenses issued by the Board shall be issued for a two-year biennial licensure period. A licensee who seeks renewal of the license shall submit a renewal application and the renewal fee set forth in N.J.A.C. 13:35-6.13 prior to the expiration date of the license.

(b) The Board shall send a notice of renewal to each licensee at the address registered with the Board at least 60 days prior to the expiration of the license. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew.

(c) If a licensee does not renew the license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a renewal application, a renewal fee and a late fee, as set forth in N.J.A.C. 13:35-6.13. During this 30-day period, the license shall be valid, and the licensee shall not be deemed to be practicing without a license.

(d) A license that is not renewed within 30 days of its expiration shall be automatically suspended. An individual who continues to practice with a suspended license shall be deemed to be engaged in unlicensed practice and shall be subject to the penalties prescribed by N.J.S.A. 45:9-22 for practicing without a license.

(e) A licensee whose license has been automatically suspended for five years or less for failure to renew pursuant to (d) above may be reinstated by the Board upon completion of the following:

1. Payment of the reinstatement fee and all past delinquent biennial renewal fees pursuant to N.J.A.C. 13:35-6.13;
2. Completion of the Board-approved continuing education units required for each biennial registration period for which the licensee was suspended; and
3. Submission of an affidavit of employment listing each job held during the period of suspended license which includes the name, address, and telephone number of each employer.

(f) In addition to the fulfilling the requirements set forth in (e) above, a licensee whose license has been automatically suspended for more than five years who wishes to return to practice shall reapply for licensure and shall demonstrate that he or she has maintained proficiency. An applicant who fails to demonstrate to the satisfaction of the Board that he or she has maintained proficiency while suspended may be subject to an examination or other requirements as determined by the Board prior to reinstatement of his or her license.

(g) Renewal applications shall provide the licensee with the option of either active or inactive status. A licensee electing inactive status shall pay the inactive license fee set forth in N.J.A.C. 13:35-6.13 and shall not engage in practice.

(h) A licensee who elected inactive status and has been on inactive status for five years or less may be reinstated by the Board upon completion of the following:

1. Payment of the reinstatement fee;
2. The completion of the Board-approved continuing education units required for each biennial registration period for which the licensee was on inactive status; and
3. Submission of an affidavit of employment listing each job held during the period the licensee was on inactive status which includes the name, address, and telephone number of each employer.

(i) In addition to the fulfilling the requirements set forth in (h) above, a licensee who has been on inactive status for more than five years who wishes to return to the practice of medicine shall reapply for licensure and shall demonstrate that he or she has maintained proficiency. An applicant who fails to demonstrate to the satisfaction of the Board that he or she has maintained proficiency while on inactive status may be subject to an examination or other requirements as determined by the Board prior to reinstatement of his or her license.

New Rule, R.2000 d.397, effective October 2, 2000.

See: 31 N.J.R. 2449(a), 32 N.J.R. 3573(a).

Repeal and New Rule, R.2005 d.120, effective April 18, 2005.

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

Section was "Reinstatement of lapsed license".

13:35-2B.18 Sexual misconduct

(a) The purpose of this section is to identify for physician assistants licensed by the State Board of Medical Examiners conduct which shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Patient" means any person who is the recipient of a professional service rendered by a physician assistant relating to treatment.

"Patient-physician assistant relationship" means a relationship between a physician assistant and a patient wherein the licensee owes a continuing duty to the patient to render physician assistant services consistent with his or her training and experience.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual

contact” includes, but is not limited to, the imposition of a part of the licensee’s body upon a part of the patient’s body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient’s body into or near the genital, anal or other opening of the other person’s body.

“Sexual harassment” means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee’s activities or role as a provider of physician assistant services, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. “Sexual harassment” may consist of a single extreme or severe act or of multiple acts and may include conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee. “Sexual harassment” may also include conduct of a nonsexual nature if it is based on the sex of an individual.

“Spouse” means either the husband or wife of the licensee or an individual involved in a long-term committed relationship with the licensee.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-physician assistant relationship. The patient-physician assistant relationship is ongoing for purposes of this section, unless:

1. Physician assistant services are actively terminated by way of written notice to the patient and is documented in the patient record; or
2. The last physician assistant services were rendered more than one year ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-physician assistant relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own sexual relationships.

(f) A licensee shall provide privacy and examination conditions which prevent the exposure of the unclothed body of the patient unless necessary to the professional services rendered.

(g) A licensee shall not engage in sexual harassment whether in a professional setting such as an office, hospital,

residence or health care facility, or outside of the professional setting.

(h) A licensee shall not engage in any other activity, such as, but not limited to, voyeurism or exposure of the genitalia of the licensee, which would lead a reasonable person to believe that the activity serves the licensee’s personal prurient interest or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall be deemed to constitute gross or repeated malpractice pursuant to N.J.S.A. 45:1-21(c) or (d) or professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering physician assistant services to a spouse, as defined in (b) above, providing that the rendering of such physician assistant services is consistent with accepted standards of physician assistants and that the performance of physician assistant services is not utilized to exploit the patient spouse for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the patient.

New Rule, R.2000 d.456, effective November 20, 2000.
See: 31 N.J.R. 3040(a), 32 N.J.R. 4122(a).

SUBCHAPTER 3. LICENSING EXAMINATIONS AND ENDORSEMENTS, LIMITED EXEMPTIONS FROM LICENSURE REQUIREMENTS; POST-GRADUATE TRAINING

13:35-3.1 Licensing examination; physicians

(a) Effective December 1994, the standard medical and surgical licensing examination in the State of New Jersey shall be the United States Medical Licensing Examination (USMLE), Step 3. The licensing examination administered by the National Osteopathic Board of Examiners shall also be recognized as an alternative standard licensing examination for graduation of American Osteopathic Association-approved Osteopathic Medical Schools.

(b) Prior to January 1995, the Federation Licensing Examination (FLEX) shall serve as one of the two standard medical and surgical licensing examinations in the State of New Jersey.

(c) A candidate for examination who has met all other requirements of law for medical licensure shall be admitted to USMLE, Step 3, upon appropriate demonstration to the Board of successful completion of one of the following examination sequences. Completion of the examination sequence includes attainment of a passing score on each portion of the sequence. (The passing score for each portion of the examination sequence will be the score that was deemed passing by the Board at the time the examination was administered.)

1. USMLE Step 1 or National Board Part I and USMLE Step 2 or National Board Part II; or
2. FLEX Component I.

(d) The entire examination sequence shall be passed within a seven-year period. The seven-year period begins when the first portion of the examination is passed. No passing credit shall be carried beyond the seven-year period. Candidates shall be required to repeat the entire USMLE sequence if the entire examination is not passed within seven years of the initial date of passage.

(e) No candidate shall be permitted more than five attempts to pass Step 3 of USMLE without demonstration of additional education, experience or training acceptable to the Board.

Amended by R.1985 d.224, effective May 6, 1985.
See: 17 N.J.R. 561(a), 17 N.J.R. 1131(c).

Substantially amended.

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

Added alternate method for taking FLEX exam; deleted (e).

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), added a second sentence.

Case Notes

Physician loses license for gross negligence by performing risky hysteroscopic examinations. In the Matter of Brookman, 97 N.J.A.R.2d (BDS) 43.

Conjecture and supposition insufficient evidence to support finding podiatrist assisted suspended podiatrist in unlawful practice. In the Matter of DeTolla, 97 N.J.A.R.2d (BDS) 37.

There was no violation of law warranting suspension or revocation of surgeon's license. In the Matter of the Suspension or Revocation of the License of Termanini, 93 N.J.A.R.2d (BDS) 85.

13:35-3.2 Endorsement; physicians

(a) The Board shall grant without examination a license to practice medicine and surgery to any person who shall furnish proof that he or she can fulfill the requirements of law relating to applicants for admission by examination and who:

1. Has presented certification of either the National Board of Medical Examiners or Osteopathic Examiners

that the applicant has attained diplomate status from either of those organizations;

2. Has been licensed in another state upon successful passage of a non-FLEX written plenary examination taken in English prior to December 31, 1972, and submits proof of active and reputable practice of medicine and surgery for 10 or more years;

3. Has been licensed in another state upon successful passage of a non-FLEX written plenary examination and presents proof of certification as a diplomate of any specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association;

4. Has taken the FLEX exam prior to January 1981, and attained a FLEX weighted average of 74.5 or better;

5. Has taken the FLEX exam between January 1981 and June 1985, and attained a weighted score of 75 or better;

6. Has taken the FLEX exam between June 1985 and December 1994 and attained a FLEX weighted average of 75 or better in each of the two components;

7. Has presented certification from either the National Board of Medical Examiners or Osteopathic Examiners that the applicant has successfully passed the first two parts of the examination administered by those entities, as well as proof of the attainment of a score of 75 or better on Component II of the FLEX or passing scores on Step 3 of the USMLE; or

8. Has taken the full USMLE examination sequence in a manner consistent with New Jersey standards, as set forth in N.J.A.C. 13:35-3.1.

Amended by R.1985 d.224, effective May 6, 1985.

See: 17 N.J.R. 561(a), 17 N.J.R. 1131(c).

Added text: "in an examination . . . a five year period."

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).

13:35-3.3 Endorsement; podiatric physicians

The Board shall grant without examination a license to practice podiatry to any person who shall furnish proof of satisfaction of the requirements of law relating to applicants for admission by examination and who shall further furnish proof of certification by the National Board of Podiatric Medical Examiners certifying that the applicant has attained a passing score in said examination.

As amended, R.1983 d.510, effective November 7, 1983.

See: 15 N.J.R. 784(a), 15 N.J.R. 1865(e).

Added (c).

Amended by R.1985 d.224, effective May 6, 1985.

See: 17 N.J.R. 561(a), 17 N.J.R. 1131(c).

Added text to (a) 4. "prior to June 1985, . . . 75 or better."

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 and added reference to taking test "in English".

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

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

13:35-3.4 (Reserved)

Amended by R.1985 d.224, effective May 6, 1985.

See: 17 N.J.R. 561(a), 17 N.J.R. 1131(c).

Added text "Component II".

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.

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 "Examination in FLEX Component II after proof of passing the first two parts of the National Boards of Medical or Osteopathic Examiners".

13:35-3.5 (Reserved)

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.

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

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

Section was "Endorsement; certified nurse midwives".

13:35-3.6 Bioanalytical laboratory director license, plenary or specialty, granted to physicians

(a) The Board shall grant to any person licensed in this State to practice medicine and surgery a plenary license to direct and supervise a registered bioanalytical laboratory, without examination, provided that:

1. Such person is certified in clinical pathology by a specialty board approved by the A.M.A. or the A.O.A.; or

2. Such person is certified in anatomic pathology or is Board-eligible, and can demonstrate to the satisfaction of the Board appropriate training, including completion of a residency program in pathology in a laboratory or laboratories acceptable to the Board, and not less than three full years of post graduate general bioanalytical laboratory experience in a laboratory or laboratories acceptable to the Board.

(b) The Board shall grant to any person licensed in the State to practice medicine and surgery, a specialty license in one or more of the following: toxicological chemistry, microbiology (including bacteriology, parasitology, virology and mycology), cytogenetics, biochemical genetics, clinical chemistry (including urinalysis, endocrinology and toxicology), andrology, diagnostic laboratory immunology, embryology, hematology (including flow cytometry), serology and molecular diagnostics, without examination, provided that such person is certified by a national accrediting board in one of the above specialties, which board requires a doctorate degree plus experience, such as the American Board of Pathology, the American Osteopathic Board of Pathology, the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, the American Board of Histocompatibility and Immunogenetics, the American Board of Molecular Genetics and the American Society of Cytogenetics, or any other national accrediting board recognized by the State Board of Medical Examiners. The specialty license shall authorize the licensee to perform and supervise only those tests which are within the scope of the specific specialty license issued by the Board.

(c) Nothing herein shall be construed to waive registration and fees required by the Bioanalytical Laboratory and Laboratory Directors Licensing Act, as amended (N.J.S.A. 45:9-42.1 et seq.).

(d) It shall be deemed to be professional misconduct for a bioanalytical laboratory director to accept a request for examination of material from the human body unless the request originates from a licensed plenary physician, dentist, podiatrist, chiropractor or any other health care professional authorized by Board rule, public health officer or agency or local board of health. The reports of the scientific data obtained shall be submitted in writing bearing the original, rubber stamp or electronic signature of a licensed laboratory director and shall be addressed to individuals who originate a request pursuant to this subsection.

Amended by R.1987 d.368, effective September 8, 1987.

See: 19 N.J.R. 1179(a), 19 N.J.R. 1647(a).

Substantially amended.

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

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

At (a)2, added requirement of completion of residency program in pathology in a laboratory.

Amended by R.1991 d.565, effective November 18, 1991.

See: 23 N.J.R. 23(a), 23 N.J.R. 3520(b).

Added (d).

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

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

In (a), substituted "anatomic" for "anatomical" preceding "pathology" in 2; rewrote (b); in (c), substituted "and Laboratory Directors" for "Director" preceding "Licensing Act" and added the N.J.S.A. reference.

13:35-3.7 Limited exemption from licensure; physicians

(a) "Exempt physician" means a person holding the academic degree of M.D. or D.O., currently employed or pending employment on a salary basis at a State or county institution on its medical staff or as a member of the teaching or scientific staff of a State agency, who has patient care responsibility and who does not conduct any type of private medical practice.

(b) "Exemption" means the exercise of discretion granted to the State Board of Medical Examiners of New Jersey pursuant to law to permit a physician unlicensed in the State of New Jersey to engage in the limited practice of medicine and surgery under the conditions set forth in said statute without being in violation of the Medical Practice Act, N.J.S.A. 45:9-1 et seq.

(c) Any physician employed or to be employed under an exemption from licensure must:

1. Satisfy all statutory and regulatory requirements preceding examination required by law;

2. Take and pass the earliest USMLE Step 3 examination given subsequent to the physician's start of employment;

3. Make application for licensure within 10 days after notification of successfully passing USMLE or cease employment.

the earliest USMLE Step 3 not taken or on the date the physician is notified of failure on the earliest USMLE Step 3 taken, whichever is later.

(d) Following the physician's start of employment, the exemption will automatically terminate either on the date of