

CHAPTER 35

BOARD OF MEDICAL EXAMINERS

Authority

N.J.S.A. 26:6A-1 et seq., specifically 26:6A-4, 45:1-15.1 and 45:9-2.

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Chapter 35, Board of Medical Examiners, was repealed and Chapter 35, Board of Medical Examiners, was adopted as new rules by R.1983 d.314, effective August 1, 1983.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Examiners, was readopted as R.1994 d.522, effective September 19, 1994, and Subchapter 7, Chiropractic Practice, was repealed by R.1994 d.522, effective October 17, 1994.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.

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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SUBCHAPTER 1. MEDICAL SCHOOLS, COLLEGES, EXTERNSHIPS AND CLERKSHIPS

13:35-1.1 Observership program

(a) "Observer" shall mean an undergraduate medical student of an allopathic or osteopathic school accredited either by the Liaison Committee on Medical Education or the American Osteopathic Association or a foreign medical school listed in either the World Health Organization Directory published by the World Health Organization or the International Medical Education Directory (IMED) published by the Educational Commission for Foreign Medical Graduates (ECFMG) and whose graduates are accepted by the New Jersey Board of Medical Examiners as eligible to sit for the

licensure examination. Observerships are limited to the student's vacation period in an extra-curricular professional experience as delineated in this section.

(b) An observership program shall be limited to:

1. Observation of operative procedures;
2. The taking of histories;
3. The performance of physical examinations;
4. The performance of non-invasive procedures under the direct supervision of and in the immediate presence of the supervising licensed physician; and
5. The participation in patient rounds and other organized patient care activities of the supervising physician.

(c) At no time shall the observer be delegated any responsibility for the care of the patient, the patient's diagnosis or any aspect of the patient's treatment, including the prescription of medication for the patient. An observer shall make no entries on the patient's permanent record.

(d) The observer shall at all times of patient contact wear an identifying badge inscribed "Medical Student."

(e) Prior to commencing participation in an observership program, the student shall have obtained written permission from the Chief of Staff and the Administration of the participating hospital and shall retain such letter.

(f) Under no circumstances shall the performance of any of the duties listed in (b) above by an observer, while engaged in such a program, be construed as the practice of medicine.

(g) The time spent in an observership program shall not be considered as part of or credited toward fulfillment of any statutory academic or clinical requirements for licensure.

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

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

Substituted "references to observers" for "references to externs" and substituted "references to observerships" for "references to externships" throughout; in (a), substituted "delineated in this section" for "hereafter delineated" at the end; and in (f), substituted "duties listed in (b) above" for "above duties" following "any of the".

Amended by R.2011 d.155, effective June 6, 2011.

See: 42 N.J.R. 1310(a), 43 N.J.R. 1359(b).

In (a), inserted the second occurrence of "either" and "published by the World Health Organization or the International Medical Education Directory (IMED) published by the Educational Commission for Foreign Medical Graduates (ECFMG)".

Case Notes

Regulations relied upon by the State, such as N.J.A.C. 8:39-11.2, to establish a standard of care were never part of the Board of Medical Examiners regulations, and were never administered by the Board of Medical Examiners; in view of this, the physician licensee's failure to comply with these regulations did not constitute professional misconduct in violation of N.J.S.A. 45:1-21(e) and/or repeated acts of negligence in violation of N.J.S.A. 45:1-21(d). In re Suspension or Revocation of License of Anama, OAL Dkt. No. BDS 2628-02, 2007 N.J. AGEN LEXIS 394, Initial Decision (June 11, 2007).

5. Treatments and drugs prescribed or provided, as in (a) above;
6. Any agreements with the patient; and
7. Periodic reviews conducted.

Amended by R.2003 d.263, effective July 7, 2003.
See: 34 N.J.R. 3441(a), 35 N.J.R. 2935(a).

Rewrote (c).

Amended by R.2011 d.155, effective June 6, 2011.
See: 42 N.J.R. 1310(a), 43 N.J.R. 1359(b).

In (c)1, deleted "and" from the end; in (c)2, substituted "; and" for a period at the end; and added (c)3.

Case Notes

Five-year revocation of a physician's license was appropriate where the physician fraudulently prescribed Percocet and deliberately falsified medical records to justify the issuance of those prescriptions. Two undercover officers testified that the physician prescribed the medication over a period of time without conducting a thorough physical examination and medical history and in spite of their statements that they were in no pain whatsoever. In re Costino License Revocation, OAL Dkt. No. BDS 736-08, 2009 N.J. AGEN LEXIS 276, Initial Decision (May 14, 2009), adopted (N.J. State Bd. of Medical Examiners June 8, 2009); aff'd per curiam, A-2348-09T2, 2010 N.J. Super. Unpub. LEXIS 2455 (App. Div. December 21, 2009).

13:35-7.7 Prohibitions on prescribing, administering or dispensing of controlled substances for detoxification; limited exceptions

(a) A practitioner shall not issue a prescription for a narcotic drug or for a depressant drug listed in any schedule which drug is intended for the purpose of "detoxification" or "maintenance treatment."

(b) Unless registered with the Division of Consumer Affairs to conduct a narcotic treatment program pursuant to N.J.S.A. 24:21-10 and N.J.A.C. 13:45H-11.2, a practitioner shall not dispense or administer a narcotic drug or a depressant drug listed in any schedule which drug is intended for the purpose of "detoxification" or "maintenance treatment," except:

1. To relieve acute withdrawal symptoms, provided that:
 - i. Such treatment shall not exceed 72 hours;
 - ii. No more than one day's supply of the drug is provided to the patient at a time; and
 - iii. Arrangements are made for referring the patient to an addiction specialist or a drug treatment program for treatment; or
2. As an adjunct to other medical or surgical treatment for conditions other than addiction in a licensed health care facility.

Amended by R.2000 d.400, effective October 2, 2000.
See: 31 N.J.R. 2454(a), 32 N.J.R. 3576(a).

In (a), and (b), inserted references to depressant drugs.
Administrative change.

See: 43 N.J.R. 1204(b).

13:35-7.8 Prohibitions and limitations in the prescribing, administering or dispensing of amphetamines and sympathomimetic amines

(a) A practitioner shall not prescribe, order, dispense, administer, sell or transfer any amphetamine or sympathomimetic amine designated as a Schedule II controlled substance for use in weight management, dieting or any other anorectic purpose, or for the treatment of fatigue.

(b) A practitioner may prescribe, dispense or administer amphetamine or sympathomimetic amine drugs or compounds designated as Schedule II controlled substances, only as follows:

1. For the treatment of the following conditions:
 - i. Narcolepsy established by recognized diagnostic criteria;
 - ii. Idiopathic Central Nervous System Hypersomnia established by recognized diagnostic criteria;
 - iii. Attention Deficit Disorder established by recognized diagnostic criteria;
 - iv. Drug-induced brain dysfunction;
 - v. Epilepsy;
 - vi. Depression shown to be refractory to other therapeutic modalities; and
 - vii. Senile apathetic behavior;
2. For immediate use in a hospital for acute conditions such as depression associated with illness or surgery;
3. For the differential diagnostic psychiatric evaluation of depression; or
4. For the clinical investigation of the effects of such drugs or compounds in which case, in addition to other requirements of applicable law, prior application therefor shall have been made to the Board and approval granted before any such investigation is begun.

(c) A practitioner who prescribes, dispenses or administers amphetamines or sympathomimetic amines shall prepare and maintain patient medical records which accurately reflect the utilization of any drug subject to this section, the specific diagnosis, the information upon which the diagnosis is based, including testing and consultations, and the treatment objectives for which the drug is being prescribed.

(d) The following list, although not exhaustive or exclusive, includes many of the generic and brand-name Schedule II drugs which are subject to this section:

Adderall
Amphetamine
Desoxyn
Dexedrine
Dextroamphetamine
Methamphetamine
Methylphenidate
Ritalin

13:35-7.9 Prohibitions and special limitations on prescribing, administering or dispensing anabolic steroids

(a) Unless an accepted medical necessity exists, a practitioner shall not prescribe, order, dispense, administer, sell or transfer any anabolic steroid or human growth hormone, for the purpose of hormonal manipulation intended to increase muscle mass, strength or weight. Body building, muscle enhancement, or increasing muscle bulk or strength through the use of anabolic steroid or human growth hormone by a person in good health for the intended purpose of improving performance in any form of exercise, sport or game is not a valid medical purpose.

(b) A practitioner shall prepare and maintain patient medical records which accurately reflect the utilization of any substance or drug subject to this section, which records must indicate the diagnosis, the information upon which the diagnosis is based, and the purpose for which the substance or drug has been prescribed.

(c) The following list, although not exhaustive or exclusive, includes many of the generic and brand-name anabolic steroids and human growth hormones subject to this section:

Bolenone
 Chlorotestosterone
 (4-chlorotestosterone)
 Chorionic gonadotropin
 Closebol
 Dehydrochlormethyltestosterone
 Dihydrotestosterone
 (4-dihydrotestosterone)
 Ethylestrenol
 Fluoxymesterone
 Mesterolone
 Methandienone
 Methandriol
 Methandrostenolone
 Methenolone
 Methyltestosterone
 Mibolerone
 Nandrolone
 Norethandrolone
 Oxandrolone
 Oxymesterone
 Oxymetholone
 Somatrem
 Somatropin
 Stanolone
 Stanozolol
 Testolactone
 Testosterone
 Trebolone

13:35-7.10 Enforcement

(a) A violation of N.J.A.C. 13:35-7.1 through 7.9 may be deemed to constitute one or more of the following:

1. Distribution or dispensing of a controlled substance in an indiscriminate manner, or not in good faith, or without good cause, as prohibited by N.J.S.A. 45:1-21(e);

2. Gross or repeated malpractice, neglect, or incompetence in the practice of medicine, as prohibited by N.J.S.A. 45:1-21(c) and (d);

3. Professional misconduct, as prohibited by N.J.S.A. 45:1-21(e);

4. A failure to comply with the provisions of an Act or regulation administered by the Board, as prohibited by N.J.S.A. 45:1-21(h); and

5. Unprofessional conduct, which would present an imminent danger to an individual patient or to the public health, safety or welfare, within the meaning of N.J.S.A. 45:1-37(a).

(b) A practitioner who is in possession of information that reasonably indicates that another practitioner has prescribed, dispensed or administered any drug or drugs in a manner that jeopardizes the public health, safety or welfare or for purposes deemed to be unlawful pursuant to this subchapter shall report such information to the Board pursuant to N.J.S.A. 45:1-37.

Amended by R.2011 d.155, effective June 6, 2011.
 See: 42 N.J.R. 1310(a), 43 N.J.R. 1359(b).

In (a)1, (a)5 and (b); updated the N.J.S.A. reference; and in (b), substituted the first and third occurrences of "that" for "which".

SUBCHAPTER 8. HEARING AID DISPENSERS

13:35-8.1 Purpose

The rules in this subchapter are established pursuant to N.J.S.A. 45:9A-7 and govern the licensing and the practice of hearing aid dispensing in the State of New Jersey.

13:35-8.2 Definitions

The following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Act" means the New Jersey Hearing Aid Dispensers Act, N.J.S.A. 45:9A-1 et seq. as amended and/or supplemented.

"Advertisement" means any attempt, directly or indirectly, by publication, display, dissemination or circulation, in print or electronic media, which induces or attempts to induce any person to purchase or enter into an agreement to purchase a hearing aid, services and/or merchandise from a licensee.

"Board" means the State Board of Medical Examiners.

"Committee" means the Hearing Aid Dispensers Examining Committee.

"Hearing aid" means a hearing aid as defined by N.J.S.A. 45:9A-2(c) and includes the earmold system.