

CHAPTER 35

BOARD OF MEDICAL EXAMINERS

Authority

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

Source and Effective Date

R.1999 d.356, effective September 20, 1999.
See: 31 N.J.R. 1742(a), 31 N.J.R. 3117(a).

Executive Order No. 66(1978) Expiration Date

Chapter 35, Board of Medical Examiners, expires on September 20, 2004.

Chapter Historical Note

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Chapter 35, Board of Medical Examiners, was repealed and Chapter 35, Board of Medical Examiners, was adopted as new rules by R.1983 d.314, effective August 1, 1983.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Examiners, was readopted as R.1994 d.522, effective September 19, 1994, and Subchapter 7, Chiropractic Practice, was repealed by R.1994 d.522, effective October 17, 1994.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

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 the World Health Organization Directory 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".

13:35-1.2 Fifth Pathway

(a) The Board shall accept application for licensure from an applicant who does not meet the usual statutory prerequisites for educational background, in the following circumstances to be known as the Fifth Pathway:

1. The applicant has completed the entirety of the academic curriculum in residence at a medical school in a foreign country located outside of the United States, Puerto Rico or Canada or in a school-authorized clinical training program;

2. The medical school was approved throughout the applicant's period of education by the government of the country of domicile to confer the degree of Doctor of Medicine and Surgery or its equivalent, and was listed in the World Health Organization Directory;

3. The applicant has satisfactorily completed all the requirements for a matriculated student of that foreign medical school to receive a diploma, except for internship and/or social service;

4. The applicant has achieved a passing score on a screening examination acceptable to the Educational Commission on Foreign Medical Graduates (ECFMG) even though not eligible for ECFMG certification; and

5. The applicant has had his or her academic record reviewed and approved by a medical school approved by the Liaison Committee on Medical Education, which school has accepted the applicant in a one-academic-year program of supervised clinical training under its direction, and the applicant has satisfactorily completed that program as evidenced by receipt of a certificate issued by the sponsoring medical school.

(b) The applicant meeting the requirements in (a) shall thereafter be deemed by the Board to be eligible to enter a graduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA). Upon satisfactory completion of the three years of post-graduate training required by N.J.A.C. 13:35-3.11, the applicant may apply for licensure in this State.

Amended by R.1989 d.532, effective October 16, 1989.
See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a).
Rule deleted and replaced with new text.

13:35-1.3 Postgraduate training

Postgraduate training shall be taken under the auspices of a hospital or hospitals accredited for such training by the Accreditation Council for Graduate Medical Education (ACGME) or by the American Osteopathic Association (AOA) or by the American Podiatric Medical Association (APMA), as applicable to the profession. The program shall further be acceptable to the Board, which shall take into account the standards adopted by the Advisory Graduate Medical Education Council (AGMEC).

Amended by R.1989 d.532, effective October 16, 1989.
See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a).
Rule deleted and replaced with new text.

Case Notes

Reasonable regulation of advertising. Att'y Gen. Form Op. No. 20 (1977).

13:35-1.4 Military service in lieu of M.D. or D.O. internship or postgraduate training

The Board may grant a license to practice medicine and surgery to any person who shall furnish proof, satisfactory to the Board, that such person has fulfilled all of the formal requirements established by law, and who has served at least two years in active military service in the United States Army, Air Force, Navy, Marine Corps, Coast Guard or the U.S. Public Health Service as a commissioned officer and physician and surgeon in a medical facility which the Board determines constitutes the substantial equivalent of the approved internship or residency training program required by law; provided, however, that such military service actively occurred subsequent to graduation from an approved medical school.

Amended by R.1989 d.532, effective October 16, 1989.
See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(a).
Reference to N.J.S.A. deleted and replaced with word "law".

13:35-1.5 Registration and permit requirements for graduate medical education programs in medicine or podiatry

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

"Applicant" means a graduate of a medical or podiatric school, unlicensed in this State, seeking authorization to engage in the practice of medicine or podiatry as a resident in a graduate medical education program. A registration applicant is seeking authorization to participate in the first year of a graduate medical education program. A permit applicant is seeking authorization to participate in his or her second year (or beyond) of a graduate medical education program.

Reprimand by Board for failure to prepare patient record noted; transcript of Board proceeding not records within the meaning of the Right to Know Law, but are public records under common law; injury action's plaintiff's right to examine and inspect records superior to Board's interest in confidentiality (citing former N.J.A.C. 13:13-6.12). *Beck v. Bluestein*, 194 N.J.Super. 247, 476 A.2d 842 (App.Div.1984).

Use of improper procedures at abortion clinics and failure to supervise staff support suspension of doctors operating facility. In the *Matter of Miro and Steck*, 97 N.J.A.R.2d (BDS) 1.

Revocation of license; psychiatrist who engaged in sexual contact with patients. In the *Matter of the Suspension or Revocation of the License of Schermer*, 94 N.J.A.R.2d (BDS) 33.

Performing numerous cardiac procedures without sufficient medical justification, failing to maintain accurate patient records, along with other acts of negligence, malpractice and incompetence, warranted license revocation; penalty and costs also assessed. In *Matter of Suspension or Revocation of License of Rodriguera*, 93 N.J.A.R.2d (BDS) 33.

Surgeon's license revoked; unauthorized prescriptions for controlled dangerous substances, failure to maintain medical records, and prescribing medications in manner deviating from accepted professional standards. In *Matter of Suspension or Revocation of License of Makarenko*. 92 N.J.A.R.2d (BDS) 1.

13:35-6.6 (Reserved)

As amended, R.1984 d.197, effective May 21, 1984.

See: 16 N.J.R. 416(a), 16 N.J.R. 1281(a).

(h) amended concerning labeling of drugs.

Amended by R.1984 d.600, effective January 7, 1985.

See: 15 N.J.R. 2415(a), 17 N.J.R. 102(a).

(b)1 substantially amended.

Amended by R.1985 d.505, effective October 7, 1985.

See: 17 N.J.R. 1866(a), 17 N.J.R. 2442(a).

(h)4 added; (b) 4 through (h)8 recodified to (h)5 through (h)9.

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

See: 21 N.J.R. 2226(b), 21 N.J.R. 3307(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 "Requirements for issuing prescriptions for and dispensing all medications; special requirements for prescribing or dispensing controlled drugs".

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 purchaser 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.