

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(j). 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.

Petition for Rulemaking.

See: 38 N.J.R. 848(a), 1246(b), 1608(b), 4762(a), 5419(b).

Petition for Rulemaking.

See: 42 N.J.R. 859(b), 1255(d), 2150(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 the introductory paragraph of (f)4 and in (f)4i, inserted "and Senior Services"; and in (i)3, substituted the first occurrence of "that" for "which" and updated the first N.J.S.A. reference.

Petition for Rulemaking.

See: 44 N.J.R. 2917(a), 3087(a).

Petition for Rulemaking.

See: 45 N.J.R. 386(a), 1862(a).

#### 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 and Senior Services 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 Accreditation 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 8 1/2 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