

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Chapter 35, Board of Medical Examiners, was repealed and Chapter 35, Board of Medical Examiners, was adopted as new rules by R.1983 d.314, effective August 1, 1983.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Examiners, was readopted as R.1994 d.522, effective September 19, 1994, and Subchapter 7, Chiropractic Practice, was repealed by R.1994 d.522, effective October 17, 1994.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

13:35-6A.7 Certification of death

The attending physician and the corroborating physician shall both document within the patient record the results of all tests performed during their examinations, and shall both sign the chart. After the two clinical examinations and appropriate confirmatory tests have been completed and documented on the patient's chart, and if both examiners have been able to make all requisite determinations, then brain death may be declared. The two physicians who performed the clinical examinations shall both certify death in the patient's chart and the attending physician shall certify death on the death certificate.

**SUBCHAPTER 7. PRESCRIPTION,
ADMINISTRATION AND DISPENSING OF
DRUGS**

13:35-7.1 Definitions

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

“Actual acquisition cost” means the cost actually incurred by the practitioner in acquiring a drug from a supplier and shall not include any amounts charged by any entity in which the practitioner has a direct or indirect financial or other beneficial interest.

“Administer” means the physical, in-person provision of a drug by way of injection, vaccine, allergenic extract or nebulized preparation or the provision of multiple dose vials of injectable medications.

“Amphetamine or sympathomimetic amine” means a drug which, chemically and pharmacologically, acts as a central nervous system stimulant.

“Anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogen, progestin and corticosteroids), which promotes muscle growth, as well as any salt, ester, or isomer of such substance which acts in a similar manner in the human body.

“Controlled substance” means a drug classified in any of the schedules (I through V) of the Controlled Dangerous Substances Act, N.J.S.A. 24:21-5 to 24:21-8.1, recognized to have a potential for abuse or to lead to physical or psychological dependence.

“Dispensing” means the distribution of drugs intended by the physician for the personal use of the patient. “Dispensing” as used in this subchapter does not include the in-office administration of injections, vaccines, allergenic extracts or

nebulized preparations or the provision of multiple dose vials of injectable medication.

“Drug” means any article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement to those sources, including, but not limited to, a controlled substance, a prescription legend drug, an over-the-counter preparation, a vitamin or food supplement, or any compounded combination of any of the above or a transdermal patch or strip, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or medical condition in humans or intended to affect the structure or function of the human body. The term, as used in this subchapter, is synonymous with “medicine” as used in N.J.S.A. 45:9-22.11. “Drug,” as used in this subchapter, does not mean a device or durable medical equipment.

“Intractable pain” means pain which has been shown to be refractory or resistant to management with standard methods of treatment or for which insufficient relief has been found after reasonable efforts.

“Narcotic” means an analgesic drug which chemically and pharmacologically acts as an opiate.

“Non-prescription substance” means an over-the-counter preparation, a vitamin or food supplement, or any compounded combination of any of these preparations and supplements or a transdermal patch or strip for which no prescription is required pursuant to law.

“Practitioner” means any licensee subject to the regulatory authority of the Board authorized to prescribe or dispense drugs, including physicians, podiatrists and, to the extent permitted by law and rule, registered residents, resident permit holders, physician assistants and certified nurse midwives.

“Prescribing” means the act of directing that a patient take a drug included in prescription legend through either a written or verbal order.

“Terminal illness” means a diagnosed medical condition with a prognosis of less than one year.

Petition for Rulemaking.

See: 30 N.J.R. 1643(a), 31 N.J.R. 2658(b).

Amended by R.2000 d.400, effective October 2, 2000.

See: 31 N.J.R. 2454(a), 32 N.J.R. 3576(a).

In definition of “Drug”, substituted “medicine” for “medication”; inserted definition for “Non-prescription substance”.

13:35-7.2 Requirements for issuing written prescriptions for medicines

(a) A practitioner, acting within the scope of lawful practice and after an examination or evaluation of the patient's condition, may issue a written prescription for a drug to a patient, guardian or authorized representative in the form authorized by this section. The practitioner shall assure

that appropriate follow-up is provided and that the effects of the drug are properly evaluated and integrated into the treatment plan for the patient.

(b) (Reserved)

(c) Written prescriptions shall be issued only on New Jersey Prescription Blanks (NJPB), secured from an approved vendor and subject to the required security mandates of the prescription blank program.

(d) A practitioner shall include the following information on each written prescription:

1. The prescribing practitioner's full name, address, telephone number, license number, and proper academic degree or identification of professional practice for which licensed;
2. The full name, age and address of the patient;
3. The date of issuance;
4. The name, strength and quantity of the drug prescribed;
5. Words, in addition to numbers, to indicate the drug quantity authorized if the prescription is for a Schedule II controlled substance, for example: ten (10) Percodan; or five (5) Ritalin 5 mg;
6. The number of refills permitted or time limit for refills, or both;
7. The handwritten original signature of the prescribing practitioner;
8. An explicit indication, by initials placed next to "do not substitute" (see (e) below), if it is the prescribing practitioner's intention that a specified brand name drug be dispensed;
9. The prescribing practitioner's D.E.A. number, if the drug is a controlled substance; and
10. Adequate instruction for the patient as to frequency; a direction of "p.r.n." or "if needed" alone may be used if appropriate.

(e) A prescribing practitioner shall advise each patient by adequate notice, for example, by a sign or pamphlet in the waiting room of the office, that the patient may request the practitioner to substitute a generic drug for any brand name drug prescribed.

(f) Each practitioner shall use only written prescription blanks which shall be imprinted with the words "substitution permissible" and "do not substitute," with a space for the prescribing practitioner's initials next to the chosen option, and which shall not include preprinted information designed to discourage or prohibit substitution.

(g) When using health care facility or multi-prescriber prescription blanks, the full name and license number of the prescribing practitioner shall be legibly printed at the top of the prescription or the identity of the prescriber shall be designated by a checkmark or other legible means.

(h) Each prescription for a controlled substance shall be written on a separate NJPB.

Amended by R.2000 d.400, effective October 2, 2000.

See: 31 N.J.R. 2454(a), 32 N.J.R. 3576(a).

Inserted a new (c), and recodified former (c) as (d); in the new (d), inserted "license number," following "telephone number" in 1; recodified former (d) through (f) as (e) and (g); rewrote the new (g); and added (h).

Case Notes

Charges of misconduct against physician who prescribed medication to his girlfriend were dismissed due to his familiarity with her medical history and her sophisticated knowledge of such medication. In the Matter of the Suspension or Revocation of the License of Kunish, 96 N.J.A.R.2d (BDS) 9.

13:35-7.3 Verbal prescriptions (Reserved)

13:35-7.4 Electronically transmitted prescriptions (Reserved)

13:35-7.5 Requirements for the dispensing of drugs and special limitations applicable to the dispensing of drugs for a fee

(a) A practitioner, acting within the scope of lawful practice and after an examination or evaluation of the patient's condition, may dispense a drug directly to a patient, guardian or authorized representative under the circumstances and limitations set forth in this section. The practitioner shall assure that appropriate follow-up is provided and that the effects of the drug are properly evaluated and integrated into the treatment plan for the patient.

(b) A practitioner who dispenses drugs in the office shall maintain those drugs in an area kept in an orderly and sanitary manner, and in accordance with standard pharmaceutical practice and manufacturer recommendations concerning storage conditions, including refrigeration, where necessary. A practitioner shall not maintain in inventory any drugs which are outdated, misbranded, deteriorated, adulterated, recalled, unlabeled, damaged, discontinued or which were previously dispensed to a patient. A practitioner shall be responsible for the disposal of such drugs in a manner which will not pose a health hazard and in accordance with all local, State and Federal requirements.

(c) All drugs dispensed shall be recorded in the applicable patient record.

(d) All drugs dispensed, with the exception of samples of drugs which are not controlled substances and which are packaged and labeled by the manufacturer, shall be recorded in a permanent, contemporaneous dispensing log which shall contain, at a minimum, the following: