

CHAPTER 35

BOARD OF MEDICAL EXAMINERS

Authority

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

Source and Effective Date

R.1994 d.522, effective September 19, 1994.
See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a).

Executive Order No. 66(1978) Expiration Date

Chapter 35, Board of Medical Examiners, expires on September 19, 1999.

Chapter Historical Note

Chapter 35, Board of Medical Examiners, was filed and became effective prior to September 1, 1969. Chapter 35, except Subchapter 8, Hearing Aid Dispensers, was repealed and new rules of the Board of Medical Examiners, Subchapters 1 through 6, were adopted as R.1983 d.314, effective August 1, 1983.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 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 was readopted as R.1994 d.522. See: Source and Effective Date. As a part of R.1994 d.522, Subchapter 7, Chiropractic Practice, was repealed, effective October 17, 1994. See: 26 N.J.R. 2526(a), 26 N.J.R. 4195(a). Subchapter 11, Alternate Resolution Program, became effective June 19, 1995. See: 27 N.J.R. 640(a), 27 N.J.R. 2410(a). See, also, section annotations.

Petition for Rulemaking. See: 30 N.J.R. 740(c), 1642(a).

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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3. There shall be a quality assurance program which requires the following:

i. At least annually, documented inspection of personnel credentials upon hire and at least annually thereafter or sooner as required by circumstances including dates of certification and license renewal; review of the procedure manuals; determination of the qualifications, identity and supervision of employees designated to perform specific functions; and assessment of accuracy in test results;

ii. At least quarterly, evaluation of personnel skills and review of test performance techniques and data recordation or more frequently as required by demonstrated staff performance; verification of billing accuracy; and observance of other factors consistent with accepted standards of practice pertinent to the screening test or diagnostic study procedure;

iii. The required quality assurance program shall include documented regular mechanical inspections as customary for that equipment, but no less frequently than four times per year, and before re-use after the reporting of a mechanical or pertinent personnel problem; and

iv. Minimum safety precaution standards shall be established, observed by all personnel and confirmed by the supervising physician.

(e) For screening services accepting examinees without physician referral, the responsible physician shall prepare and produce, at the request of the Board, a report for a specified calendar year(s) designating the total number of examinees issued abnormality reports and the advisory letter required by (c) above.

(f) For radiologic procedures, the responsible physician shall assure compliance with the applicable requirements of the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. and the Radiation Protection Code, N.J.A.C. 7:28. Certification of inspection results shall be kept on the premises. The responsible physician may delegate certain tasks to a New Jersey-licensed x-ray technologist within that person's scope of practice, provided that the physician has complied with (d) above.

(g) In addition to compliance with all other subsections of this rule, a mammography screening program shall establish a written protocol which shall be documented in the facility policy and procedure manual and which shall be brought to the attention of pertinent personnel.

1. The protocol shall include specific criteria for screening: for example, age, family history, personal medical history, permissible frequency of testing and other indicators. It shall provide for palpation by a physician or by instructed licensed registered nurse personnel, and for appropriate positioning preparatory to the test. The screening program shall include instruction in breast self-

examination, which may be provided in the form of written materials.

2. The physician shall require that anyone other than a physician operating mammography equipment shall be currently licensed as a diagnostic (or mammographic) radiologic technologist as shall be required by the Department of Environmental Protection and Energy in accordance with N.J.S.A. 26:2D-1 et seq. and N.J.A.C. 7:28-19 et seq. The equipment used shall conform to the applicable sections of N.J.A.C. 7:28. Baseline mammography images and periodic images shall be maintained as part of the record of the examinee or referred patient and preserved for seven years from date of last entry. The physician may release the original of any image, providing that signed documentation thereof is retained in the patient's file.

3. Mammography services offered in mobile settings shall be furnished only under the supervision of a doctor of medicine or of osteopathy who is certified by the American Board of Radiology or by the American Osteopathic Board of Radiology or who possesses equivalent certification requirements as determined by the Board of Medical Examiners and who successfully completes a minimum of 20 hours of post-graduate work in mammography interpretation every 24 months after the date he or she begins reading mammographies. Documentation shall be kept on the premises. Physicians practicing in any setting, mobile or otherwise, who offer mammography services as authorized Medicare providers or as meeting requirements of the American College of Radiology, must meet the more stringent training requirements of those programs.

4. The physician shall require that anyone operating mammography equipment, other than a physician, shall be currently licensed by the New Jersey Radiologic Technologist Board of Examiners to perform radiographic procedures. Documentation shall be kept on the premises.

(h) A physician may request a radiologist to perform diagnostic radiology services intended to confirm or rule out suspected pathology. The radiologist shall ascertain whether sufficient objective or clinical data have been provided to determine that the tests are appropriate to the apparent problem. When, in the opinion of a reasonable radiologist, further information is needed to select the appropriate test, then the radiologist, whenever feasible, shall personally consult with the referring doctor in advance of performing the test. In addition or as an alternative, at the professional discretion of the radiologist, he or she shall perform a focused clinical examination in appropriate cases. Whenever feasible, the radiologist shall be notified of the patient's appearance at the radiologic facility and shall direct the licensed x-ray technologist as to procedure, method of obtaining the test data, scheduling of the physician's oral and written report, and timely notification to the patient or referring physician of results or the need to repeat the test.

(i) A patient or examinee shall not be billed for a test result which is professionally incomplete, or which is found to be non-diagnostic due to inadequate equipment or technique.

(j) This rule shall be effective April 6, 1992, except that subsections (d), (e), (f) and (g) shall be operative July 6, 1992.

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

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

Recodification and reference made to specific Acts. Repeal and New Rule, R.1992 d.169, effective April 6, 1992 (subsections (d), (e), (f) and (g) operative July 6, 1992.

See: 23 N.J.R. 2858(a), 24 N.J.R. 1367(a).

Section was "Standards concerning testing and diagnostic centers".

Case Notes

Mobile testing service for evaluation of orthopedic injuries was subject to regulatory authority of state Board of Medical Examiners (BME), even though service performed majority of its testing at behest of chiropractors; regulation by BME is determined by nature of service performed, and not by identity of those to whom service is rendered. *Allstate Ins. Co. v. Orthopedic Evaluations, Inc.*, 304 N.J.Super. 278, 700 A.2d 372 (A.D. 1997).

Failure of mobile-testing service to comply with regulations mandating ownership of and responsibility for such services by licensed physician precluded eligibility for reimbursement from personal injury protection (PIP) benefits, even if service was medically necessary. *Allstate Ins. Co. v. Orthopedic Evaluations, Inc.*, 300 N.J.Super. 510, 693 A.2d 500 (A.D.1997).

13:35-2.6 (Reserved)

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

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

Exception of Certified Nurse Midwife added in (a), reference to specific statute deleted.

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Section was "Midwife and Certified Nurse Midwife Practice".

13:35-2.7 (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 qualification of 2 years Obstetrical clinical experience.

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Section was "Qualifications".

13:35-2.8 (Reserved)

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Section was "Minimum conditions of practice".

13:35-2.9 (Reserved)

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Section was "Minimum standards for C.N.M. and lay midwife practice during prenatal stages".

13:35-2.10 (Reserved)

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Section was "Management by a physician C.N.M. team for high-risk patients".

13:35-2.11 (Reserved)

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Section was "Intrapartum management".

13:35-2.12 (Reserved)

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Section was "Postpartum and other care".

13:35-2.13 Limited privileges and conditions of practice permitted for a graduate physician pending licensure

(a) Persons who are graduates of medical schools recognized by the Board may commence a period of supervised post-graduate training in a licensed hospital with an Accreditation Council on Graduate Medical Education (ACGME) or American Osteopathic Association (AOA) approved residency training program in this State immediately upon graduation. A training period commencing prior to the start of a formal ACGME or AOA approved post-graduate year term shall not exceed six months and shall be documented in the hospital record.

(b) Persons who are graduates of foreign medical schools recognized by the Board but who are not yet deemed eligible for licensure in this State because of the requirements of N.J.S.A. 45:9-8 and N.J.A.C. 13:35-3.11 may sit for the USMLE Step 3 upon completion of one year of approved post-graduate training and satisfaction of all other requirements of N.J.S.A. 45:9-1 et seq. and N.J.A.C. 13:35-3.1.

R.1984 d.138, effective April 16, 1984.

See: 16 N.J.R. 216(a), 16 N.J.R. 920(a).

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

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

13:35-2.14 (Reserved)

R.1984 d.245, effective June 18, 1984.

See: 16 N.J.R. 685(a), 16 N.J.R. 1612(a).

Repealed by R.1992 d.332, effective September 8, 1992.

See: 23 N.J.R. 3682(a), 24 N.J.R. 3094(a).

Old section "Reserved" recodified to 13:35-2A.10. Section was "Limited privileges and conditions of practice permitted for a graduate nurse midwife pending results of certifying examination and licensure".

SUBCHAPTER 2A. LIMITED LICENSES: CERTIFIED NURSE MIDWIFERY

13:35-2A.1 Certified Nurse Midwife practice

(a) A Certified Nurse Midwife ("CNM") shall mean a registered professional nurse licensed in the State of New Jersey who, by virtue of added knowledge and skill gained through an organized program of study and clinical experience, is qualified to manage the care of women and/or newborns during the antepartum, intrapartum and postpartum periods and to provide well-woman health care as expressly limited and set forth below.

(b) A CNM shall maintain current registration with the Board of Medical Examiners (hereinafter the "Board") in order to discharge those responsibilities set forth in this subchapter.

6. Is incapable of discharging the functions assigned by the supervising physician;

7. Has exhibited any behavior or engaged in any conduct reasonably demonstrating a mental impairment or substance abuse; or

8. Has engaged in activities or performed tasks without physician direction and supervision, beyond the scope of those permitted herein or beyond the abilities, experience or training of the physician assistant or the supervising physician.

(h) The director of an approved program shall give notice to the Board and immediately revoke or suspend the privilege of any supervising physician participating in the program if the director has information indicating that the physician, in the course of performing responsibilities as a supervisor:

1. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

2. Has engaged in gross negligence, gross malpractice or gross incompetence or repeated acts of malpractice, negligence or incompetence;

3. Has been convicted of a crime or has pleaded guilty, non vult, or nolo contendere to a crime or any other offense which relates adversely to the physician assistant's delegated activities;

4. Has had his or her license or authority to practice revoked, suspended, rescinded or limited by any other state, agency or authority;

5. Is incapable of discharging the functions as a supervising physician;

6. Has exhibited any behavior or engaged in any conduct reasonably demonstrating a mental impairment or substance abuse; or

7. Has allowed or permitted a physician assistant to engage in tasks without physician direction and supervision, beyond the scope of those permitted under this rule or beyond the abilities, experience or training of the physician assistant or the supervising physician.

(i) The director shall not reinstate any revoked participant without the approval of the Board.

(j) Any physician who delegates tasks to a person not in accordance with the requirements set forth in this rule or who allows a physician assistant to perform tasks in violation of (d) above shall be deemed to have engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e).

(k) This section shall be operative May 12, 1991. Two years following that operative date, the Board shall determine after study and consultation with such experts as it

may deem warranted whether the program established pursuant to this rule should be continued, altered or expanded.

New Rule, R.1991 d.56, effective February 4, 1991 (operative May 12, 1991).
See: 22 N.J.R. 2135(b), 23 N.J.R. 311(a).

13:35-6.16 Professional practice structure

(a) A licensee of the Board of Medical Examiners shall engage in professional practice in this State only when in possession of a current biennial registration issued by the Board.

1. The term "professional practice" is deemed to include the offering by a Medical Board licensee of opinions on matters of professional practice (including testimony and professional review organization service), whether or not the offeror has provided direct patient care, where the holding of a professional board license is a significant component or foundation for the offering of the professional opinion.

2. The name of the professional practice entity shall be composed of the actual last names of one or more of the owning licensees, partners or shareholders or composed of a phrase or words reasonably descriptive of the type of professional practice.

(b) The practice shall be conducted in a business form consistent with the principles set forth in this rule and, where so noted, only in accordance with the designated special conditions pertaining to that form. There shall be policies and procedures with respect to professionally licensed personnel. These topics shall include, but not be limited to, the following:

1. Responsibility of a licensed practitioner for review and approval of hiring professional staff and timely demand for and verification of current licensing credentials and any other educational credentials required by law or pertinent agency rule (for example, recertifications, continuing professional education, cardiopulmonary resuscitation, etc.);

2. Medical policies at the office or place where services shall be rendered;

3. Cleanliness of premises;

4. Maintenance, registration and inspection of professional equipment as necessary;

5. Standards for recordkeeping as to patient medical records, billing records, and such other records as may be required by law or rule including Controlled Dangerous Substance inventories, as applicable;

6. Security, including drug storage, prescription pad control, confidentiality of patient records;

7. Periodic audit of patient records and of professional services to assure quality professional care on the premises;

8. Responsibility for the professional propriety of billing and of advertising or other representations including disclosure of financial interest in health care services offered to the public; and

9. Preparation and maintenance of a written list of current fees for standard services, which list shall be available to patients on request.

(c) The licensee shall post a conspicuous notice in the waiting room stating: "INFORMATION ON PROFESSIONAL FEES IS AVAILABLE TO YOU ON REQUEST."

(d) A licensee, alone or with the other investing licensees, may employ a licensed health care professional as director of the professional entity to carry out those policies and procedures designated by the licensee(s). The director must be licensed to conduct all services offered at the premises. Either the director, one of the investing licensees, or another licensed health care professional authorized to render those medical services without direct supervision, must be on the premises at all times when patients or clients are receiving professional services, except as specified herein or otherwise permitted by rule of the Board. With regard to health care entities whose services are performed away from the primary office address (for example, entities providing house calls, mobile medical services, or provision and management of services relating to durable medical equipment, etc.), the director need not be present at all times, provided that patients or clients are receiving professional services from an investing or employed professional who is a licensee of a professional health care board of this State, except as may be limited by law or by another rule of this Board.

(e) A licensee may invest in a health care service as defined in N.J.A.C. 13:35-6.17(a). Said service shall be owned solely by one or more licensed health care professionals except as otherwise permitted by licensure granted by another State agency. Whether or not any or all of the owners, partners or directors all regularly practice on the premises or within the entity, each such person who is a licensee of this Board shall be responsible to the Board for requiring maintenance of all professional practice standards and control set forth in this rule, except as excused by (g) below. A licensee who has invested in a health care service in which he or she has a significant beneficial interest as defined in N.J.A.C. 13:35-6.17(a)5, to which he or she refers patients, shall assure that professional justification for the referred service is documented in the patient record maintained at that entity. Referred services include but are not limited to prescriptions for devices such as hearing aids, eyeglasses, intraocular lenses, requests for radiologic studies, etc. Referral of patients is now limited to the exceptions set forth in N.J.S.A. 45:9-22.4 as amended.

(f) Acceptable professional practice forms are as follows:

1. Solo: A practitioner may practice solo and/or may employ or otherwise remunerate other licensed practitioners to render professional services within the scope of practice of each employee's license, but which scope shall not exceed that of the employer's license. The practitioner may employ ancillary non-licensed staff in accordance with Board rules, if any, and accepted standards of practice.

2. Partnership or professional association: A practitioner may practice in a partnership or professional association, but such entity shall be composed solely of licensed health care professionals. The professional services offered by each practitioner, whether a partner or shareholder, shall be the same or in a closely allied medical or professional health care field. For the purpose of this rule, closely allied fields, pursuant to the Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., shall be deemed to include the health care professions licensed by the State Professional Boards under the Division of Consumer Affairs, for example, chiropractic, dentistry, nursing, nurse midwifery, optometry, physical therapy, podiatry, psychology, social work, etc. If the scope of practice authorized by law for each such person differs, any document used in connection with professional practice including but not limited to professional stationery, business cards, advertisements or listings and bills, shall designate the field to which such person's practice is limited. Prescriptions shall list only those practitioners authorized by law to prescribe; shall designate the practice of each listed prescriber as required by N.J.A.C. 13:35-6.1; and shall comply with the data requirements of N.J.A.C. 13:35-6.6.

3. Associational relationship with other practitioner or professional entity: For the purpose of this rule, the term "employment" shall include an ongoing associational relationship between a licensee and professional practitioner(s) or entity on the professional practice premises for the provision of professional services, whether the licensee is denominated as an employee or independent contractor, for any form of remuneration.

i. A practitioner may be employed, as so defined, within the scope of the practitioner's licensed practice and in circumstances where quality control of the employee's professional practice can be and is lawfully supervised and evaluated by the employing practitioner. Thus, a practitioner with a plenary license shall not be employed by a practitioner with a limited scope of license, nor shall a practitioner with a limited license be employed by a practitioner with a more limited form of limited license. By way of example, a physician with a plenary license may be employed by another plenary licensed physician, but an M.D. or D.O. may not be employed by a podiatrist (D.P.M.) or chiropractor (D.C.) or midwife or certified nurse midwife (R.M., C.N.M.). A podiatrist may not employ a chiropractor. This section shall not preclude any licensee from employing licensed personnel such as nurses, x-ray technologists, physical therapists, ophthalmic dispensers and ophthalmic technicians, etc., as appropriate to the primary practice of the employer.

4. Shareholder or employee of a general business corporation: A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated medical director licensed in this State who is regularly on the premises and who (alone or with other persons authorized by the State Department of Health, if applicable) is responsible for licensure credentialing and provision of medical services.

i. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short-term care facility, ambulatory care facility or other type of health care facility or health care provider such as a diagnostic imaging facility. The above may include a licensed facility which is a component part of a for-profit corporation employing or otherwise remunerating licensed physicians.

ii. The corporation is not in the business of offering treatment services but maintains a medical clinic for the purpose of providing first aid to customers or employees and/or for monitoring the health environment of employees. The provisions of N.J.A.C. 13:35-6.5 regarding preparation, maintenance and release of treatment and health monitoring records shall apply to persons receiving care or evaluation in this setting.

iii. The corporation is a non-profit corporation sponsored by a union, social or religious or fraternal-type organization providing health care services to members only.

iv. The corporation is an accredited educational institution which maintains a medical clinic for health care service to students and faculty.

v. The corporation is licensed by the State Department of Insurance as an insurance carrier offering coverage for medical treatment and the licensee is employed to perform quality assurance services for the insurance carrier.

5. A licensee may also have an equity or employment interest in a professional practice (including a professional service corporation) which is a limited partner to a general business corporation which, in turn, has a contractual agreement with the professional service entity, in the following circumstances only. The general business corporation may contract to provide the professional practice with services exclusively of a non-professional nature such as but not limited to routine office management, hiring of non-professional staff, provision of office space and/or equipment and servicing thereof, and billing services. The licensee shall nevertheless be responsible, at all times except as excused by (g) below, to assure that an appropriate licensed health care professional determines and carries out all services and medical care policies set forth in (b) and (c) above, including retention of sole discretion regarding establishment of patient fees and modification or waiver thereof in an individual case. The licensee shall assure, as a condition of such contractual arrangement, that the general business corporation makes no representations to the public of offering, under its own corporate name, health care services which require licensure.

(g) A licensee employed or having a significant beneficial interest in any of the practice forms listed in (f) above shall terminate such employment or sever professional affiliation upon acquiring personal knowledge that the entity regularly fails to provide or observe the quality control/assurance mechanisms listed in (b) and (c) above and refuses, upon request, to implement such mechanisms. A licensee terminating employment or affiliation with a general business corporation as described in (f)4 above for reasons required by this section shall so notify the Board.

(h) In addition to the practice forms set forth above, a licensee may participate in organized managed health care plans including, but not limited to, those involving wholly or partially pre-paid medical services. By way of example, this includes plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical plans, individual practice associations, or other similar designations. Such plans typically cover certain types of health care services but only when the services are rendered by licensees who are provider-members of the plan; or the patient has been referred to a specialist or admitted to a hospital by a provider-member and has secured the advance approval of the plan administration. Such plans usually permit coverage for referrals in situations of emergency or other special conditions. A licensee may participate in any such plan which complies with the following professional requirements:

1. The licensee retains authority at all times to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of each patient.

2. The licensee retains authority at all times to inform the patient of appropriate referrals to any other health care providers:

- i. Whether or not those persons are provider-members of the plan; and
 - ii. Whether or not the plan covers the cost of service by such non-member providers to the patient.
3. Plan patients are informed that they may be personally responsible for the cost of treatment by a provider who is not a member-provider within the plan, or for treatment not having the approval of the plan administration.
4. Provisions for remuneration to the licensee shall not be inconsistent with the principles listed in N.J.A.C. 13:35-6.17(f).

(i) The following pertain to laboratory service:

1. A Board-licensed physician having a financial interest in a laboratory for the performance of bioanalytical tests may prescribe and/or perform such tests on the physician's primary medical office premises solely for the patients of the prescribing licensee. The licensee is responsible for establishing and maintaining a protocol for quality and cost control and for compliance with the provisions of the Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.26 et seq. Billing shall be done only in the name of the practitioner's medical office and in compliance with N.J.S.A. 45:1-10.

2. A Board-licensed physician having a financial interest in a laboratory offering services only to patients of the owning licensee(s) but conducted at a site other than the office premises of the owners shall assure that such laboratory has a director and that the laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act. The physician shall assure compliance with N.J.S.A. 45:1-10 and with N.J.S.A. 45:9-22.4 as amended, and the name of the laboratory 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(l). Petition may be made for 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.

3. A Board licensee having a financial interest in a laboratory which accepts referrals from physicians who are not owners/investors shall assure that such laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act and is directed by a bioanalytical laboratory director licensed pursuant to N.J.S.A. 45:9-42 et seq. who shall establish and maintain quality and cost control. The physician shall assure compliance with N.J.S.A. 45:1-10 and with N.J.S.A. 45:9-22.4, as amended, and the name of the laboratory 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(l). Petition may be made for 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.

(j) The following pertain to physical therapy:

1. A physician may perform and/or prescribe physical therapy to be administered in the physician's office. Billing shall be done only in the name used by the physician's 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 physical therapy entity at a location other than the physician's office, whether conducted under the physician's name or under 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 (j)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(l). Petition may be made for 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.

(k) The following pertain to radiology:

1. A physician may prescribe and/or perform radiologic services on the physician's office premises. Billing shall be done only in the name of the prescriber or office. Where reading of film is done by an outside consultant, see N.J.A.C. 13:35-6.17(c)3.

2. A physician having a financial interest in a radiologic service facility at a location other than the physician's fixed office premises, whether conducted under the physician's name or under another name, shall establish quality control/assurance provisions as required by (b) and (c) above. The physician shall assure compliance with N.J.S.A. 45:9-22.4, as amended, and the name of the facility shall be accompanied at all times by the name(s) of the licensee(s) except as authorized for media advertising by N.J.A.C. 13:35-6.10(l). Petition may be made for 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(l). 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).

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).

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 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 American 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 8½ 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 patients of any significant financial interest held in a health care service.

Accordingly, take notice that practitioners in this office do have a financial interest in the following health care service(s) to which patients are referred:

(LIST APPLICABLE HEALTH CARE SERVICES)

You may, of course, seek treatment at a health care service provider of your own choice. A listing of alternative health care service providers can be found in the classified section of your telephone directory under the appropriate heading.

1. In any inquiry regarding the applicability of the financial disclosure provisions of this rule, including the holding of a significant beneficial interest or exemption therefrom, the Board may require a Board licensee to submit financial and familial information sufficient to determine the financial interest in an investment.

2. With regard to durable medical equipment, a physician having a significant beneficial interest as defined in (a) above, who prescribes and refers a patient to a source for said product, shall provide the personal notice copy to a patient in any setting, including the practitioner's office and prior to the time of patient discharge from a hospital, nursing home or free standing health care facility (for example, urgent care offices or ambulatory surgery centers).