

2. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL."

3. A physician who advertises through the use of testimonials shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation and a signed, notarized statement and release verifying the truthfulness of the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement obtained prior to the time the testimonial is advertised.

4. Any guarantee of results from any procedure is prohibited.

(o) Nothing contained in this section shall be construed to prohibit the licensing board from adopting additional rules concerning advertising by Board licensees. To the extent that any conflict or inconsistency may arise between the provisions of this section and any subsequently adopted rule dealing more specifically with the same subject matter as set forth, such subsequent adopted rule shall control.

R.1984 d.139, effective April 16, 1984.

See: 16 N.J.R. 32(a), 16 N.J.R. 921(a).

A rule entitled "Advertising and Solicitation" formerly at this cite was repealed and replaced.

Amended, R.1984 d.372, effective August 20, 1984.

See: 16 N.J.R. 1026(b), 16 N.J.R. 2286(a).

Subsection (m) new.

Amended by R.1986 d.467, effective December 1, 1986.

See: 18 N.J.R. 1788(d), 18 N.J.R. 2390(a).

Text added to (h) and (l).

Amended by R.1989 d.325, effective June 19, 1989.

See: 21 N.J.R. 696(a), 21 N.J.R. 1710(b).

In (a): deleted "Definitions" and added new 7 regarding graphic representation. Revised language throughout to modify an existing prohibition on use of testimonials, discounts and offering of free services.

Added new (c)11 and 12, deleting old (c)11.

Added new (g)1-8 and new (m) and (n), recodifying old "n" as new "o".

Amended by R.1994 d.329, effective July 5, 1994.

See: 26 N.J.R. 1219(b), 26 N.J.R. 2795(c).

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

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

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

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

In (a)5, added a reference to the Internet.

Case Notes

Abstention; action by podiatrist association challenging constitutionality of regulation restricting medical professionals' advertising of board certification. *American Institute of Foot Medicine v. New Jersey State Bd. of Medical Examiners*, D.N.J.1992, 807 F.Supp. 1170.

Former N.J.A.C. 13:35-4.1 and 13:35-6.13 requiring degree designations on licenses and regulating advertising, respectively, held invalid as

outside Board's authority under the Medical Practices Act. *Eatough v. Bd. of Medical Examiners*, 191 N.J.Super. 166, 465 A.2d 934 (App.Div. 1983).

13:35-6.11 Excessive fees

(a) The Board of Medical Examiners shall review information and complaints concerning allegations of excessive fees charged by licensees of the Board and may establish Excessive Fee Review Committees to perform various aspects of the review function. This regulation is not intended to impinge upon the strong public policy in favor of a competitive, free enterprise economy embodied in the anti-trust laws of the United States and of this State. Excessive Fee Review Committees shall consider comparable fees charged by licensees not under inquiry only to the minimum extent necessary to render a determination as to whether a fee is excessive.

(b) A licensee of the Board of Medical Examiners shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances.

(c) Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty and difficulty of the procedure or treatment;
3. The skill required to perform the procedure or treatment properly;
4. Any requirements or conditions imposed by the patient or by the circumstances;
5. The nature and length of the professional relationship with the patient;
6. The experience, reputation and ability of the licensee performing the services;
7. The nature and circumstances under which services are provided. Unless services are provided during an emergency or other circumstances where opportunity, custom and practice will preclude discussion prior to the rendition of such services, the licensee shall, in advance of providing services, specify or discuss and agree with the patient, the fee or basis for determination of the fee to be charged.

(d) Charging an excessive fee in violation of (b) above shall constitute professional misconduct subjecting the licensee to 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).

(c)4 deleted, 5-8 recodified to 4-7.

Case Notes

Physician found guilty by New York Board of Regents properly had New Jersey medical license revoked. In the Matter of the Suspension or Revocation of the License of Del Gizzo, 94 N.J.A.R.2d (BDS) 1.

13:35-6.12 (Reserved)

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

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

Superfluous language deleted from (f).

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

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

Section was "Excessive fee review committees".

13:35-6.13 Fee Schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)		ii. Examination (lay midwife license)	50.00
i. Initial application fee	\$325.00	iii. Endorsement (lay midwife license)	50.00
ii. Initial registration fee		iv. Initial registration fee	
(1) If paid during the first year of a biennial renewal period	340.00	(1) If paid during the first year of a biennial renewal period	230.00
(2) If paid during the second year of a biennial renewal period	170.00	(2) If paid during the second year of a biennial renewal period	115.00
iii. N.J.S.A. 45:9-21(n)—exemption	225.00	v. Biennial registration	\$230.00
iv. N.J.S.A. 45:9-21(b)—temporary license	50.00	6. Certified Nurse Midwifery (registration)	
v. Endorsement	225.00	i. Application fee	125.00
vi. Biennial registration	340.00	ii. Examination, C.N.M.	50.00
vii. Biennial registration	250.00	iii. Endorsement (C.N.M.)	50.00
viii. Biennial registration for licensee over 65 without health care facility or HMO affiliation	125.00	iv. Initial registration fee	
ix. Permit	50.00	(1) If paid during the first year of a biennial renewal period	230.00
2. Podiatry (license)		(2) If paid during the second year of a biennial renewal period	115.00
i. Application fee	125.00	v. Biennial registration, C.N.M.	\$230.00
ii. Examination	150.00	vi. Biennial prescriptive authorization	50.00
iii. Initial registration fee		7. Orthoptist (registration)	
(1) If paid during the first year of a biennial renewal period	230.00	i. Application fee	125.00
(2) If paid during the second year of a biennial renewal period	115.00	ii. Registration by credentialing	25.00
iv. Endorsement	150.00	iii. Initial registration fee	
v. Biennial registration	\$230.00	(1) If paid during the first year of a biennial renewal period	170.00
vi. Biennial registration for licensee over 65 without health care facility or HMO affiliation	85.00	(2) If paid during the second year of a biennial renewal period	85.00
vii. Permit	50.00	iv. Biennial registration	170.00
3. Bio-analytical laboratory directorship, plenary license		8. Physician Assistant (license)	
i. Application fee	125.00	i. Application fee	\$125.00
ii. Examination (plenary license)	350.00	ii. Temporary license fee	50.00
iii. Exemption	150.00	iii. Initial license fee	
iv. Initial registration fee		(1) If paid during the first year of a biennial renewal period	190.00
(1) If paid during the first year of a biennial renewal period	230.00	(2) If paid during the second year of a biennial renewal period	95.00
(2) If paid during the second year of a biennial renewal period	115.00	iv. License renewal fee, biennial	190.00
v. Biennial registration	\$230.00	v. Late renewal fee	100.00
4. Bio-analytical laboratory directorship, specialty license		vi. Reinstatement fee	175.00
i. Application fee	125.00	vii. Duplicate license fee	40.00
ii. Examination (specialty license)	350.00	viii. Duplicate wall certificate	50.00
iii. Exemption (specialty license)	150.00	9. General	
iv. Initial registration fee		i. Recording of name change and issuance of replacement license	50.00
(1) If paid during the first year of a biennial renewal period	230.00	ii. Replacement of lost engrossed copy/certified true copy/biennial registration certificate	50.00
(2) If paid during the second year of a biennial renewal period	115.00	iii. Preparation of certification papers for applicants to other states	50.00
v. Biennial registration	\$230.00	iv. Late renewal fee	100.00
5. Midwifery (license)			
i. Application fee	125.00		

New Rule, R.1983 d.510, effective November 7, 1983.

See: 15 N.J.R. 784(a), 15 N.J.R. 1865(e).

Deleted old fee schedule and added new fee schedule.

Amended by R.1985 d.223, effective May 6, 1985.

See: 17 N.J.R. 562(a), 17 N.J.R. 1132(a).

Substantially amended.

Amended by R.1987 d.201, effective May 4, 1987.

See: 19 N.J.R. 353(a), 19 N.J.R. 772(a).

Both components raised from \$300.00 to \$425.00; Component I raised from \$200.00 to \$250.00 and Component II raised from \$225.00 to \$300.00.

Amended by R.1987 d.371, effective September 8, 1987.

See: 19 N.J.R. 1054(a), 19 N.J.R. 1648(a).

Increased the biennial registration fee.

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

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

Biennial registration fee decreased from \$120 to \$60 and endorsement fee set at \$60.

Amended by R.1990 d.525, effective November 5, 1990.

See: 22 N.J.R. 1988(a), 22 N.J.R. 3384(a).

Medicine and surgery examination fees increased.

Amended by R.1991 d.286, effective June 3, 1991.

See: 23 N.J.R. 833(a), 23 N.J.R. 1815(a).

Added (a)lviii and (a)2v.

Deleted (a)2 [Chiropractic (license)]; redesignated existing (a)3 through 11 as (a)2 through 10.

Changed fees in (a)1 through 8.

Amended by R.1993 d.91, effective February 16, 1993.

See: 24 N.J.R. 4011(a), 25 N.J.R. 708(a).

Revised (a)1 through 4.

Amended by R.1993 d.92, effective February 16, 1993.

See: 24 N.J.R. 4334(a), 25 N.J.R. 709(a).

Added new (a)10; redesignated old (a)10 to (a)11.

Amended by R.1993 d.260, effective June 7, 1993.

See: 25 N.J.R. 1058(a), 25 N.J.R. 2487(a).

Amended by R.1993 d.299, effective June 21, 1993.

See: 24 N.J.R. 4013(a), 25 N.J.R. 2689(c).

Amended by R.1994 d.170, effective April 4, 1994.

See: 25 N.J.R. 4583(a), 26 N.J.R. 1520(a).

Administrative Correction.

See: 26 N.J.R. 2589(b).

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

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

Amended by R.1995 d.330, effective June 19, 1995.

See: 27 N.J.R. 640(a) (see also, 27 N.J.R. 1746(a)), 27 N.J.R. 2410(a).

Increased some of the fees.

Amended by R.1995 d.423, effective August 7, 1995.

See: 27 N.J.R. 1526(a), 27 N.J.R. 2959(a).

Added Physician Assistant temporary license fee at (a)8.ii.

Case Notes

Degree designation on license. *Eatough v. Albano*, 673 F.2d 671 (1982) certiorari denied 102 S.Ct. 2931, 457 U.S. 1119, 73 L.Ed.2d 1331, see: dissenting opinion.

Preliminary injunction against rule. *Davis v. Board of Medical Examiners*, 497 F. Supp. 525 (1980).

13:35-6.14 Delegation of physical modalities to a licensed health care provider or an unlicensed physician aide

(a) "Physician," for the purpose of this section, shall mean a doctor of medicine (M.D.), a doctor of osteopathic medicine (D.O.) or a doctor of podiatric medicine (D.P.M.).

1. "Licensed health care provider," for the purpose of this section, shall mean an individual holding a current, valid license in this State as a physical therapist, registered nurse, licensed practical nurse, physician assistant, chiropractor or athletic trainer.

(b) A physician may direct his or her unlicensed employee to administer to the doctor's patients certain physical modalities in the limited circumstances set forth in this section, without being in violation of the pertinent professional practice act implemented by the Board, to the extent such conduct is permissible under any other pertinent law or rule administered by the Board or any other State agency.

(c) A physician may direct a licensed health care provider with training and experience to administer to the physician's patients physical modalities including ultraviolet (B and C bands) and electromagnetic rays including, but not limited to, deep heating agents, microwave diathermy, shotwave diathermy, ultrasound, and those modalities listed in (d) below. The physician shall retain responsibility for examining the patient, determining the appropriate modalities, assessing training and experience, as well as providing the appropriate level of supervision consistent with practice

standards, applicable to the specific licensed health care provider.

(d) A physician may direct an unlicensed aide to administer the following physical modalities: hot packs, cold packs, paraffin baths, contrast baths, and whirlpool baths. The aide shall not be permitted to perform any rehabilitative exercise programs. No other modalities including T.E.N.S. or traction shall be performed by the unlicensed physician's aide.

(e) A physician may direct the administration of an appropriate physical modality by an unlicensed assistant only where the following conditions are satisfied:

1. The doctor shall examine the patient to ascertain the nature of the trauma or disease; to determine whether the application of a physical modality will encourage the alleviation of pain and promotion of healing; to assess the risks of the modality for a given patient and the diagnosed injury or disease and to decide that the anticipated benefits are likely to outweigh those risks.

2. The doctor shall determine all the components of the precise treatment to be given at the present therapy session, including the type of modality to be used, extent of area to which it shall be applied, the length of treatment, and any other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body. This information shall be written on the patient's chart and made available at all times to the assistant carrying out the instructions. The doctor shall assure that the aide administering the treatment is identified in the patient chart on each such occasion.

3. The doctor shall ascertain a satisfactory level of education, competence and comprehension of the particular assistant, who shall be at least 18 years of age, to whom instruction has been given by the doctor as to modalities used in that office. The doctor shall prepare and maintain a written document certifying as to the instructions given to each assistant, and both doctor and assistant shall sign it.

4. The doctor shall see the patient prior to any subsequent scheduled application of the modality to ascertain that continued treatment is appropriate and that no contraindications to treatment have become apparent.

5. The doctor shall remain on the premises at all times that treatment orders are being carried out by the assistant and shall be within reasonable proximity to the treatment room and available in the event of emergency.

(f) A physician shall have due regard for the specialized training and experience of registered physical therapists, and of physiatrists and orthopedists. Injuries or diseases requiring prolonged treatment, if not administered personally by the doctor, shall normally be referred to a licensed physical therapist, to a physiatrist, orthopedist or other appropriate health care provider.

(g) A bill rendered for the limited consultation set forth in (d)4 above shall not exceed a sum which reasonably reflects the actual level of service, supervision and responsibility personally rendered by the doctor, and consistent with the factors listed in the rule prohibiting excessive fees, N.J.A.C. 13:35-6.11(b) and (c).

(h) On a health insurance claim form pertaining to such service and requiring certification by the doctor, the doctor shall specify the modality applied and shall not generically identify physical therapy.

New Rule, R.1985 d.159, effective April 1, 1985.

See: 16 N.J.R. 2065(a), 17 N.J.R. 836(a).

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

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

Requirements added that aides be identified on the patient Chart and that the aides be at least 18 years of age.

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

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

Case Notes

Rule was not ultra vires as to the Board of Medical Examiners on theory that authority rested solely with the Board of Physical Therapists. Matter of Promulgation of N.J.A.C. 13:35-6.14, 205 N.J.Super. 492, 501 A.2d 547 (App.Div.1985).

13:35-6.15 (Reserved)

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).

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

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

Section was "Delegation of tasks to physician assistants".

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.