

RULE ADOPTIONS
VOLUME 44, ISSUE 01
ISSUE DATE: JANUARY 3, 2012
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Adopted Amendments: N.J.A.C. 13:35-10.2, 10.3, and 10.4

Adopted New Rules: N.J.A.C. 13:35-10.5 through 10.17

Adopted Repeal: N.J.A.C. 13:35-10.5

Definitions; Application for Licensure; Licensure; Biennial License Renewal; License Suspension; Reinstatement of Suspended License; Inactive Status; Return from Inactive Status; Plan of Care Guidelines; Practice Outside of Educational Institutions and Professional Teams; Scope of Practice; Records; Use of Personal or Other Computer to Prepare Records; Release of Records; Advertising and Solicitation Practices; Advertising Free or Discounted Services; Required Disclosures; Testimonial Advertising; Minimum Content; Use of Professional Credentials and Certifications; Advertising by a Business Entity Offering Athletic Training; Advertising Record Retention

Proposed: January 3, 2011 at 43 N.J.R. 26(a).

Adopted: August 10, 2011 by the State Board of Medical Examiners, Paul Jordan, M.D., President.

Filed: December 8, 2011 as R.2012 d.013, **without change**.

Authority: N.J.S.A. 45:9-37.38 and P.L. 2007, c. 323.

Effective Date: January 3, 2012.

Expiration Date: May 3, 2018.

Summary of Public Comments and Agency Responses:

The official comment period ended March 4, 2011. The Board received comments from the following 98 individuals:

1. John Wagner
2. Bill Ford, ATSNJ
3. Elizabeth Hulit, PCTI
4. John Davis, Montclair State University
5. Danielle Palestina, Montclair State University
6. Suzanne Barba
7. Jennifer Williams, Montclair State University
8. Cynthia LaRosa, Montclair State University
9. Rachel Senyszyn, Montclair State University Athletic Training Student
10. Loreen Ryan, Montclair State University Athletic Training Student
11. Yanaris Ovalles
12. Mich Sudol, Montclair State University
13. Melissa Miller, Montclair State University
14. Dara Klatsky, Montclair State University Athletic Training Student
15. Carlos Cruz, Montclair State University
16. James Carbonello, Montclair State University Athletic Training Student
17. Steven Singley, Montclair State University ATEP
18. Regina Fisher, Athletic Training Student
19. Anise Johnson, Montclair State University ATEP
20. Andrea Jones, ATSNJ
21. Joanne Dzama, Morristown-Beard School
22. Linda Gazzillo Diaz, William Paterson University Athletic Training Education Program
23. Marsha Grant-Ford, ATC, PhD Montclair State University

24. Michael Finnegan, US Youth Soccer Olympic Development Program
25. Timothy Braun, Holy Cross High School
26. Jennifer Steinberg, NATA
27. Leslie Rosenblum, MS, ATC, NATA and ATSNJ member
28. Richard Sands, ATSNJ/NATA
29. Mary Schwizer
30. Michael Pawlusiak, Rutgers University Athletics
31. Art Marguiles
32. William McLaughlin, Gloucester City Schools
33. David McCune, Rutgers University
34. Sue Maurer, ATSNJ, NATA
35. Margaret Haughey, Physical Therapist, Athletic Trainer
36. Robert Scott
37. Phillip Richter, ATSNJ member
38. Tanya Dargusch
39. Michael Goldenberg
40. Anthony Riccardella, NATA
41. Elizabeth Esposito, Saint Peter's College
42. Jonathan Renelle, Secondary School Head Athletic Trainer
43. Venita Carlo, Parsippany Hills High School
44. Barbara Hyslop
45. Steven Chiesa
46. Richard J. Boergers, Seton Hall University
47. Daniel Whelan
48. Eileen Wallace, NATA, NJEA
49. Dawn Donofrio, Matawan Regional High School
50. William J. von Leer, M.A., LAT, ATC
51. Kevin Scarpa, Department of Emergency Services, Ridgewood, NJ
52. Casey Christy, MA, ATC, LAT, CSCS
53. Damien Franolich, MS, ATC, New York Red Bulls Academy
54. Tara Madigan, NJSIAA, BCWCA, NEA
55. Kazbek Tambi
56. Carleton Y. Hensal, L, ATC
57. Eileen Wallace, Special Olympics
58. Margaret Doherty, Wayne Hills High School
59. Robb S. Rehberg, PhD, ATC, NREMT, Coordinator of Governmental Relations, Athletic Trainers' Society of New Jersey
60. Corinne Hyslop, National Athletic Trainer's Association, ATSNJ member
61. Eilenn Bowker, ATSNJ
62. Garrett J. O'Donnell, NATA member
63. Melissa J. Maskery
64. Maggie Griebert, NATA member
65. Jessica Bonnett
66. Karissa Carty
67. Robert Motz
68. Valerie Silver, DPT, PT, ATC
69. Michele Lambert, University of Delaware Athletic Training Student
70. Alberto Errico, ATSNJ
71. Peter Koeniges, NATA, ATSNJ, DOE
72. Joseph Porcello, Sports Care Services LLC
73. Anna Lazic
74. Kathleen Whitehead, Licensed Athletic Trainer
75. Jill Snyder, ATC, LAT, Pompton Lakes High School
76. Barry Camhi, NATA, ASNJ

77. Anthony Testa, Director of Sports Medicine, Seton Hall University
78. David Csillian
79. Laura L. Anderson, Executive Director, Orthotics and Prosthetics Board of Examiners
80. Greg Olsen, Chicago Bears
81. Christopher O'Brien, Seton Hall University
- [page=105] 82. Mark Bramble
83. Robert Sterner, Rowan University
84. Sean Truesdell, Athletic Trainer - Sussex County Technical School
85. Scott Leiter, Kennelon High School
86. Richard P. Friscia, MS, Med, PT, AT, OSC
87. Johnny Rodriguez, Student Athletic Trainer
88. Nancy Pinkin, Executive Director, Prosthetic and Orthotic Society of New Jersey
89. Angel Montanez
90. Thomas Cutalo, Clifton High School
91. Michael Prybicien
92. Chris Locurto
93. Victoria Ziemba, University of Delaware Athletic Training Student
94. Eric Bridenbaugh
95. James R. Maison, MS, ATC
96. Lisa Affinito, Executive Director, New Jersey State Board of Physical Therapy Examiners
97. Margaret Guinan
98. Bernard J. Guinan

1. COMMENT: Several commenters support revisions to the regulations governing licensed athletic trainers.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: One commenter believes that the proposed amendments will broaden the scope of practice for licensed athletic trainers.

RESPONSE: P.L. 2007, c. 323 broadens the scope of practice for licensed athletic trainers by permitting them to provide athletic training services to athletes who are not in an interscholastic, intercollegiate, intramural, or professional athletic setting. As the amendments and new rules effectuate P.L. 2007, c. 323, the commenter is correct that they broaden the scope of practice for licensed athletic trainers.

3. COMMENT: A commenter asks when the new rules will be effective.

RESPONSE: The new rules became effective upon publication in the New Jersey Register.

4. COMMENT: One commenter believes that permitting athletic trainers to open their own businesses will stop some from leaving the profession.

RESPONSE: P.L. 2007, c. 323 allows a licensed athletic trainer to provide athletic training services to athletes in any setting when he or she is under the supervision of a physician. This includes instances where a licensed athletic trainer opens his or her own practice. The Board has not been provided any evidence that licensed athletic trainers are leaving the profession and it cannot comment on whether P.L. 2007, c. 323 will encourage licensed athletic trainers to remain in the profession.

5. COMMENT: One commenter believes that the new rules will allow athletic trainers to work at summer camps. Another supports the new rules as they will allow athletic trainers to work in clinical settings, which will provide more jobs for athletic trainers.

RESPONSE: The commenters are correct that the amendments and new rules will allow licensed athletic trainers to work at summer camps and in clinical settings.

6. COMMENT: One commenter contends that the proposed new rules will result in athletic trainers losing positions in schools. The commenter believes that permitting licensed athletic trainers to work for clinics will result in clinics enticing schools to replace their on-staff athletic trainers with employees of clinics. Contracting with clinics to supply athletic trainers would allow the schools to avoid paying benefits or hiring licensed athletic trainers full-time. The commenter fears that a licensed athletic trainer who is employed by a clinic would be required by the employing clinic to refer his or her athletes to the clinic for further "treatment." The commenter suggests that the Board draft regulations to prevent licensed athletic trainers from working at a school if they are employed by a clinic. The commenter believes that this will preserve jobs for athletic trainers in schools and avoid a clinic from coercing its licensed athletic trainers to funnel patients to the clinic.

RESPONSE: The Board is not persuaded by the commenter's contention and does not believe that the amendments and new rules will necessarily result in licensed athletic trainers losing positions in schools.

7. COMMENT: One commenter believes that the new rules will decrease competition for jobs in high schools and colleges.

RESPONSE: The Board has no position on the commenter's contention as to employment opportunities for licensed athletic trainers. The Board points out that the impetus for adopting the amendments and new rules was to effectuate P.L. 2007, c. 323 and to protect the health, safety, and welfare of athletes who receive athletic training services from licensed athletic trainers.

8. COMMENT: A commenter contends that a minor injury can cost an athlete's parents a lot of money. The commenter contends that a licensed athletic trainer can help an athlete return to play with little or no cost to the athlete's family.

RESPONSE: The Board agrees that licensed athletic trainers can help an athlete to return to play with reduced costs.

9. COMMENT: Several commenters supported amendments to N.J.S.A. 45:9-37.35 et seq. One commenter supported recent legislation that requires licensed athletic trainers to complete continuing education. Another appreciates that N.J.S.A. 45:9-37.36 provides definitions for the terms used in the law and supports the make-up of the Committee as set forth in N.J.S.A. 45:9-37.39.

RESPONSE: The Board thanks the commenters for their support and points out that it has no authority over legislation.

10. COMMENT: A commenter questions a provision in N.J.S.A. 45:9-37.39 that requires the Attorney General to provide licensed athletic trainers with the facilities and personnel to perform athletic training services. The commenter is concerned that the Attorney General may not provide adequate equipment for licensed athletic trainers.

RESPONSE: The Board believes that the commenter misread N.J.S.A. 45:9-37.39, which requires the Attorney General to provide the Athletic Training Advisory Committee with facilities and personnel. The law does not require the Attorney General to provide facilities and personnel to every athletic trainer licensed in New Jersey.

11. COMMENT: One commenter was concerned that N.J.S.A. 45:9-37.37 does not set forth a penalty for practicing athletic training without a license. The commenter asks what the penalty is for violating this statute and why it is not set forth in statutes or regulations.

RESPONSE: N.J.S.A. 45:1-25 sets forth the penalties for unlicensed practice. For the first violation, a civil penalty of up to \$ 10,000 may be imposed. For the second and subsequent violations, a civil penalty of up to \$ 20,000 may be imposed.

12. COMMENT: Two commenters support the new definition of "athlete" as it is not restricted to those who play in organized sports. They believe that the new definition will allow more people to receive "treatment."

RESPONSE: The Board thanks the commenters for their support.

13. COMMENT: Two commenters are concerned that amendments to the definition of "athlete" will require licensed athletic trainers to provide services to students participating in physical education and intramural sports. One of the commenters contends that no consideration is given to these individuals when a yearly budget is assigned to a licensed athletic trainer and asks that these budgets be increased to cover the cost of tending to these new individuals. Another believes that athletic training only applies to those who suffer sports injury and asks that "athlete" be defined so that it is limited to a licensed athletic trainers' field of study.

RESPONSE: The Board points out that the definition of "athlete" is taken from P.L. 2007, c. 323 and that it does not have the authority to alter this statutory definition. The Board has no authority over school budgets. The Board also points out that the definition of "athlete" in N.J.S.A. 45:9-37.36 prior to the enactment of P.L. 2007, c. 323 included intramural athletic activities.

14. COMMENT: One commenter disagrees with the definition of "athlete." The commenter believes that the definition is too broad as it includes anyone who engages in strenuous activity. The commenter contends that strenuous can mean different things for different people depending on their fitness level.

RESPONSE: The definition of "athlete" is taken from P.L. 2007, c. 323 and the Board does not have the authority to change this statutory definition.

15. COMMENT: A commenter asks the Board to define "strenuous physical exercise" so as to differentiate activities that are strenuous for [page=106] the general population and those that are strenuous for those with pathology. The commenter contends that amendments to N.J.S.A. 45:9-37.36, which expanded the definition of "athlete" could be misinterpreted as expanding the scope of practice for licensed athletic trainers to include patient populations that they cannot work with. The commenter has reviewed education programs accredited by the Commission on Accreditation of Athletic Training Education and contends that they do not list courses that would prepare licensed athletic trainers to meet the needs of most patient populations.

RESPONSE: The Board believes that the definition of "athlete" accurately describes the individuals to whom licensed athletic trainers may provide services and that it is not necessary to define "strenuous physical exercise" as the commenter requests. The Board agrees that what is strenuous for one person may not be so for another. The Board believes that courses in programs accredited by the Commission on Accreditation of Athletic Training Education adequately prepare an individual to provide athletic training services to the athletes that licensed athletic trainers will be working with pursuant to the amendments and new rules.

16. COMMENT: One commenter suggests that the term "athlete" be changed to "patient," which the commenter contends would be in keeping with new education objectives.

RESPONSE: The Board does not believe that it is appropriate to change the term "athlete" to "patient" as the term "athlete" is defined and used throughout N.J.S.A. 45:9-37.35 et seq., the Athletic Training Licensure Act.

17. COMMENT: A commenter disagrees with the definition of "athletic training." The commenter believes that athletic training constitutes more than just reconditioning injured athletes. She argues that it also includes diagnosing and evaluation and getting an athlete strong enough to return to competition. The commenter argues that the definition undermines an athletic trainer's ability to recognize and treat orthopedic injuries.

RESPONSE: The Board points out that the definition of "athletic training" is taken from P.L. 2007, c. 323 and that it does not have the authority to change this statutory definition.

18. COMMENT: One commenter asks whether the definition of "direction of a licensed physician" in N.J.A.C. 13:35-10.2 means that a physician has to develop an individual plan of care for each athlete.

RESPONSE: The definition of "direction of a licensed physician" has been deleted from N.J.A.C. 13:35-10.2; that term is not used in the amended rules.

19. COMMENT: A commenter contends that the summary of amendments to N.J.A.C. 13:35-10.2 did not accurately

reflect the amendments, particularly the new definition of "bracing." The commenter is concerned that language in the Summary that "items that may be purchased over-the-counter" could be construed as allowing licensed athletic trainers to apply items available from medical suppliers or directly from various specialty orthotic manufacturers. The commenter asks that the Board amend the Summary so that it conforms to the Orthotist and Prosthetist Licensing Act, N.J.S.A. 45:12B-1 et seq.

RESPONSE: The Board believes that the summary of amendments to N.J.A.C. 13:35-10.2 accurately reflected the substance of the definition of "bracing." The definition is taken from the Orthotist and Prosthetist Licensing Act and includes devices carried in stock and sold by surgical supply facilities.

20. COMMENT: Two commenters object to the characterization of the definition of "bracing" in N.J.A.C. 13:35-10.2 as a new definition. The commenters contend that this definition is not new and should remain as it is defined in regulations for the Orthotics and Prosthetics Board of Examiners.

RESPONSE: The term "bracing" is a term that was not used or defined previously in N.J.A.C. 13:35-10 and it is therefore accurate to refer to this as a "new definition" for the purposes of this subchapter.

21. COMMENT: One commenter contends that the braces provided by licensed athletic trainers must be limited to over-the-counter items. The commenter points out that the definition of "bracing" in N.J.A.C. 13:35-10.2 allows licensed athletic trainers to obtain braces from surgical supply facilities. The commenter contends that the intent of the Orthotist and Prosthetist Licensing Act, N.J.S.A. 45:12B-1 et seq., was to prevent individuals who were not licensed by the Orthotics and Prosthetics Board of Examiners from providing items that require measuring, designing, constructing, assembling, fitting, adjusting, or servicing. The commenter contends that licensed athletic trainers must be limited to purchasing items from surgical supply facilities that are suitable for over-the-counter sales to consumers.

RESPONSE: The definition for "bracing" is taken from the definition of "orthotic appliance" in N.J.S.A. 45:12B-3, which is part of the Orthotist and Prosthetist Licensing Act, N.J.S.A. 45:12B-1 et seq.

22. COMMENT: One commenter contends that the definition of "bracing" in N.J.A.C. 13:35-10.2 is vague. The commenter contends that providing and fitting functional type braces is a part of a plan of care in preventing and managing injuries.

RESPONSE: As stated in response to prior comments, the definition of "bracing" is taken from N.J.S.A. 45:12B-3. That law provides exemptions to the requirement that individuals providing orthotic appliances be licensed as orthotists by the Orthotics and Prosthetics Board of Examiners. If the provision of a device does not fall into this exemption, a licensed athletic trainer cannot provide such a device unless he or she is licensed as an orthotist.

23. COMMENT: One commenter asks if the definition of "bracing" in N.J.A.C. 13:35-10.2 permits licensed athletic trainers to apply orthoplast splinting material, or similar products, for the purposes of protecting an injured thumb or wrist.

RESPONSE: As the Board understands it, orthoplast splinting material is covered by the definition of "bracing" as a device that can be provided by licensed athletic trainers.

24. COMMENT: A commenter asks if a sports medicine catalog/vendor qualifies as a "surgical supply company" as the term is used in the definition of "bracing."

RESPONSE: The Board believes that sports medicine catalogs/vendors qualify as surgical supply companies.

25. COMMENT: One commenter supports changing the term "athletic trainer" to "licensed athletic trainer."

RESPONSE: The Board thanks the commenter for her support.

26. COMMENT: One commenter asks which medical degrees qualify an individual as a "physician" as the term is defined in N.J.A.C. 13:35-10.2. The commenter asks if a family practitioner qualifies as a "physician."

RESPONSE: The definition of "physician" in N.J.A.C. 13:35-10.2 is not contingent on a medical degree obtained by an individual. It is dependent on whether or not that person is licensed by the Board of Medical Examiners to practice medicine or surgery in New Jersey. A family practitioner who is licensed by that Board to practice medicine or surgery would be recognized as a physician.

27. COMMENT: A commenter contends that the definition of "plan of care" in N.J.A.C. 13:35-10.2 does not recognize that a licensed athletic trainer may work in a nontraditional setting.

RESPONSE: The definition of "plan of care" includes "any athletic training services . . . the athletic trainer will provide when he or she is working with an athlete outside of an interscholastic, intercollegiate, intramural or professional athletic setting." The Board believes that settings outside of the interscholastic, intercollegiate, intramural, or professional athletic setting are the nontraditional settings to which the commenter refers.

28. COMMENT: One commenter believes that the definition of "plan of care" sets forth a general plan of care that does not address the needs of specific patient populations. The commenter is concerned that this allows licensed athletic trainers to evaluate and treat populations with underlying pathologies under a general plan of care. The commenter asks that the Board provide clarification for the plan of care.

RESPONSE: The commenter is correct that the definition of "plan of care" does not address the needs of specific patient populations. The Board does not believe that this would permit licensed athletic trainers to treat underlying pathologies as patients with such pathologies would not be considered "athletes."

29. COMMENT: Two commenters ask if only an MD or DO can supervise a licensed athletic trainer. The commenters point out that, under the old regulations, chiropractors and podiatrists were authorized to supervise athletic trainers.

[page=107] RESPONSE: The definition of "physician" in N.J.A.C. 13:35-10.2 requires that a physician be licensed by the Board as a physician and surgeon. Individuals who hold an MD or a DO are eligible for such licensure. Chiropractors and podiatrists are not eligible for such licensure and are not recognized as "physicians" under the new rules.

30. COMMENT: Two commenters ask the Board to expand the definition of "supervision" in N.J.A.C. 13:35-10.2 to recognize that "voice communication" can take place through a telephone or other electronic communication, such as text messages or email. One of the commenters contends that this would be in keeping with other health care professions in other states.

RESPONSE: The Board does not believe that text messages or email constitute "voice communication" and will not change the definition of "supervision" as the commenters recommend.

31. COMMENT: The definition of "supervision" requires that a physician be available in person or through voice communication when a licensed athletic trainer is practicing. A commenter points out that this is the same standard as was imposed when licensed athletic trainers were only permitted to work for schools or professional teams. The commenter contends that this level of supervision is very broad considering the wide range of individuals for whom, and settings in which, the new rules permit licensed athletic trainers to provide services.

RESPONSE: The definition of "supervision" is from P.L. 2007, c. 323 and the Board does not have the authority to change this statutory definition.

32. COMMENT: One commenter supports provisions in the regulations that set forth how an individual may obtain a license as a licensed athletic trainer.

RESPONSE: The Board thanks the commenter for his support.

33. COMMENT: A commenter supports the new requirement in N.J.A.C. 13:35-10.4 that a licensed athletic trainer who has been suspended for failure to renew for more than three years must show that he or she is currently certified. She believes that this will ensure that such a licensed athletic trainer is up-to-date on the profession.

RESPONSE: The Board thanks the commenter for her support.

34. COMMENT: One commenter supports provisions in the regulations that set forth standards for reapplying for licensure after being suspended for more than five years.

RESPONSE: The Board thanks the commenter for her support.

35. COMMENT: A commenter contends that reference to the "National Athletic Trainers Association Board of Certification" in N.J.A.C. 13:35-10.4 should be changed to "Board of Certification, Inc."

RESPONSE: The official name for this entity is the "National Athletic Trainers Association Board of Certification" and the Board will not change the rule as the commenter suggests.

36. COMMENT: One commenter does not agree that anyone who believes they can provide preventative taping should be allowed to do so. The commenter believes that an athlete could be hurt if taping is not done properly.

RESPONSE: The provision that permitted unlicensed individuals to apply bandaging, wrapping, taping, padding, or splinting techniques to non-injured athletes was deleted and is no longer part of these rules.

37. COMMENT: A commenter opposes the deletion of a provision that permitted coaches to apply preventative and/or prophylactic taping and bandaging to a non-injured athlete. The commenter believes that this could cause difficulties for coaches.

RESPONSE: The Board believes that providing these measures to non-injured athletes prevents injuries and is included in the definition of "athletic training" in N.J.S.A. 45:9-37.36. Allowing unlicensed individuals to provide these services would violate N.J.S.A. 45:9-37.37.

38. COMMENT: One commenter is concerned with the summary of the deletion of the provision that allowed unlicensed individuals to apply bandaging, wrapping, taping, padding, or splinting techniques to non-injured athletes. The commenter points out that N.J.S.A. 45:9-37.40 permits unlicensed candidates for licensure and students enrolled in athletic training programs to provide athletic training. The commenter asks the Board to amend the summary to reflect that unlicensed candidates for licensure and unlicensed students can perform bandaging, wrapping, taping, padding, or splinting techniques.

RESPONSE: The notice of proposal Summary accurately explained the rationale for the deletion of the provision. The exemptions provided in N.J.S.A. 45:9-37.40 are clear and it was not necessary to summarize these exemptions in the notice of proposal.

39. COMMENT: A commenter asks what is considered a plan of care under N.J.A.C. 13:35-10.5. He asks if these are the same as standing orders from a physician and if a different plan of care is necessary for every type of injury treated.

RESPONSE: A plan of care is a documented arrangement between a licensed athletic trainer and a physician, which sets forth the physical treatment modalities the licensed athletic trainer will provide to athletes in an interscholastic, intercollegiate, intramural, or professional athletic setting and any services provided by the licensed athletic trainer outside of these settings. Some standing orders may be considered plans of care if they conform to the dictates of N.J.A.C. 13:35-10.5. A separate plan of care is not required for every type of injury treated. The plan of care must set forth the practices in which a licensed athletic trainer will engage.

40. COMMENT: A commenter believes that N.J.A.C. 13:35-10.5 sets forth a more restrictive plan of care when an athletic trainer is working outside of an interscholastic, intercollegiate, intramural, or professional athletic team setting.

RESPONSE: N.J.A.C. 13:35-10.5 does not set forth a more restrictive plan of care when a licensed athletic trainer is working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting. The rule does require that a plan of care address all athletic training services provided outside of such settings, as opposed to addressing only

physical treatment modalities, but this requirement does not make the plan of care more restrictive.

41. COMMENT: One commenter asks if organizations that are made up of public and private schools are considered interscholastic athletic settings under N.J.A.C. 13:35-10.5.

RESPONSE: There is no difference between public and private schools with regards to the interscholastic setting. The term "interscholastic" applies to both public and private schools and it does not matter if an organization is made up of both public and private schools.

42. COMMENT: One commenter believes that licensed athletic trainers need specific guidelines for "treatment" and direct supervision in all settings. The commenter contends that the education a licensed athletic trainer receives does not prepare him or her to treat patients independently.

RESPONSE: Pursuant to the definition of "athletic training" in N.J.S.A. 45:9-37.36 and 37.37, licensed athletic trainers may provide physical conditioning and reconditioning of athletes and the prevention of injuries incurred by athletes in the interscholastic, intercollegiate, intramural, and professional athletic settings without physician supervision. Physician supervision is required when licensed athletic trainers are providing any services outside of these settings, and when they are providing physical treatment modalities in any setting.

43. COMMENT: One commenter thought that a plan of care was always necessary between a licensed athletic trainer and a school physician when the licensed athletic trainer was working in a traditional setting.

RESPONSE: The commenter is correct in that a plan of care was always required between a licensed athletic trainer and a physician when the licensed athletic trainer provided physical treatment modalities. There was no requirement that this plan of care be with a school physician.

44. COMMENT: Some commenters are concerned that it would be difficult for licensed athletic trainers who work as substitutes to comply with plan of care requirements set forth in N.J.A.C. 13:35-10.5. The commenters ask if licensed athletic trainers who work as substitutes in schools will have to meet with a physician to agree to a plan of care. The commenters contend that this will cost schools money as they will have to pay licensed athletic trainers for time spent meeting with physicians. A commenter suggests that the Board amend N.J.A.C. 13:35-10.5 to set forth how a plan of care can recognize that a substitute licensed athletic trainer may be working in a school. This commenter asks if the Board expects that schools will know the identity of substitute licensed athletic trainers in August so that they can be included in plans of care.

RESPONSE: Nothing in the rules requires that a plan of care be between a licensed athletic trainer and a physician who works for a [page=108] specific school. As long as a licensed athletic trainer has a plan of care with a physician, he or she can work in any setting. There is no requirement that this physician have a relationship with the school or other setting in which the licensed athletic trainer works. The commenters seem to misunderstand the nature of the plan of care and their concerns appear to be based on a model in which the plan of care is established with a school. Schools need not be involved in a plan of care and the commenters concerns about how a school could recognize substitute licensed athletic trainers in a plan of care are not relevant given the nature of the plan of care.

45. COMMENT: A commenter asks whether a licensed athletic trainer who works at an athletic camp will be required to meet with the camp's physician. The commenter is concerned that this would mean that a camp's physician would have to meet with many different licensed athletic trainers during the time the camp is open.

RESPONSE: N.J.A.C. 13:35-10.5 does not require that a licensed athletic trainer working for an athletic camp meet with the camp's physician or have a plan of care with that physician.

46. COMMENT: A commenter is concerned that it will be difficult for licensed athletic trainers who work as independent contractors or who work at Special Olympics to comply with the plan of care requirements. The commenter asks if such licensed athletic trainers will be required to contract with a physician to maintain a plan of care.

RESPONSE: Every licensed athletic trainer is required to have a plan of care with a physician. As explained in response to prior comments, a plan of care need not be with a physician who has a relationship with the entity for which the licensed athletic trainer is providing services.

47. COMMENT: One commenter is concerned with provisions in the regulations that dictate that licensed athletic trainers may only work under a plan of care with a physician. The commenter believes that such monitoring is unnecessary. The commenter is concerned that this requirement will make it difficult for licensed athletic trainers to work if they must call a physician to get approval to work on a patient that needs care.

RESPONSE: The definition of "athletic training" in N.J.S.A. 45:9-37.36 requires that every licensed athletic trainer have a plan of care with a physician that covers instances when he or she provides physical treatment modalities in all settings and for all athletic training services outside of the interscholastic, intercollegiate, intramural, or professional athletic setting. Nothing in the statutes or rules require that a licensed athletic trainer call a physician to get approval to work with an athlete.

48. COMMENT: One commenter asks how a licensed athletic trainer can prove that he or she met with a physician. The commenter contends that such a meeting cannot be proven by a signature.

RESPONSE: N.J.A.C. 13:35-10.5 does not require a licensed athletic trainer to provide proof that he or she has met with a physician to develop a plan of care. The Board relies on the professionalism of its licensees to comply with the requirements of its statutes and rules.

49. COMMENT: A commenter believes that the regulations do not conform to the everyday life of athletic trainers. She does not always work under a physician's standing orders while providing athletic training services.

RESPONSE: The rules were drafted to conform to the requirements of N.J.S.A. 45:9-37.35 et seq. and the Board's understanding of the best practices to protect the health, safety, and welfare of athletes receiving services from licensed athletic trainers. The Board points out that the rules have always required that a licensed athletic trainer have a plan of care with a physician when he or she provides physical modalities.

50. COMMENT: A commenter asks if the new supervision requirements require a physician to be present whenever a licensed athletic trainer provides any "treatment" beyond first aid.

RESPONSE: A physician need not be present whenever a licensed athletic trainer provides athletic training services. A physician who is supervising a licensed athletic trainer may be accessible through voice communication.

51. COMMENT: A commenter is concerned with the requirement that a physician oversee athletic events. The commenter is concerned that a physician would not have the time to be at athletic events and questions why, if an emergency medical technician can treat patients, an athletic trainer cannot do so unless a physician is present.

RESPONSE: The statutes and rules do not require that a physician oversee athletic events.

52. COMMENT: N.J.A.C. 13:35-10.5 requires a licensed athletic trainer and a supervising physician to review the plan of care annually. A commenter asks if this review can be done over the phone or electronically or if it must be in person.

RESPONSE: N.J.A.C. 13:35-10.5 does not set forth requirements as to how annual review of a plan of care must be conducted. If a licensed athletic trainer and a physician believe that they can adequately review a plan of care over a phone or electronically, they may do so.

53. COMMENT: A commenter recommends that N.J.A.C. 13:35-10.5(c) be amended so that, in addition to voice communication, supervision may be provided through texts, email, or faxes.

RESPONSE: The definition of "supervision" in N.J.S.A. 45:9-37.36 requires that supervision be provided on-site or through voice communication. Texts, emails, and faxes are not voice communication and the Board will not change the

rule as the commenter recommends.

54. COMMENT: One commenter did not know that, in the past, a physician and athletic trainer had to meet annually to review a plan of care or that the plan of care had to be signed by the school physician and athletic trainer. Another commenter contends that licensed athletic trainers do not currently meet annually to review plans of care.

RESPONSE: The requirements that a plan of care be reviewed annually and that it be signed are new requirements and licensed athletic trainers were not required to comply with these requirements in the past.

55. COMMENT: A commenter agrees that athletic trainers working outside of the traditional setting should have a written plan of care with the physician with whom he or she is working. This will ensure that athletic trainers know what they can do and will avoid possible legal issues.

RESPONSE: The Board thanks the commenter for his support. The Board points out that a plan of care is necessary when a licensed athletic trainer is working in an interscholastic, intramural, intercollegiate, or professional athletic setting or outside of these traditional settings.

56. COMMENT: The majority of commenters oppose N.J.A.C. 13:35-10.6(a) which requires that, when a licensed athletic trainer is working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting, the licensed athletic trainer provide athletic training services only after a physician has examined an athlete. The commenters contend that this creates a two-tiered standard for practice that contradicts P.L. 2007, c. 323, which removed statutory limitations that prohibited licensed athletic trainers from working outside of the interscholastic, intercollegiate, intramural, or professional athletic setting. The commenters point out that the referral requirement is based solely on setting and not on the education or skill set of licensed athletic trainers. Many of the commenters contend that the rule will prohibit licensed athletic trainers from working in sports camps, recreation settings, performing arts settings, or clinics. Several commenters contend that licensed athletic trainers are most needed in the sports camp, recreation, and performing arts settings. The commenters contend that the rule will delay the provision of care to athletes injured on the field and could deny care to such athletes altogether. Some of the commenters are concerned that the rule could be seen as negating the purpose of having a licensed athletic trainer at athletic events. The commenters point out that, no matter the setting, a licensed athletic trainer will be working under the supervision of a physician and pursuant to a plan of care. Many of the commenters are concerned that the rule will require a physician to be on site during athletic events.

RESPONSE: N.J.S.A. 45:9-37.37 establishes a two-tiered scope of practice for licensed athletic trainers. The Board believes that in the interscholastic, intercollegiate, intramural, or professional athletic setting there is an expectation that an athlete is generally healthy due to physical examination requirements before an athlete can engage in such activities. There is no such confidence outside of these settings. This two-tiered approach does not require physician supervision whenever a licensed athletic trainer is providing services in the interscholastic, intercollegiate, intramural, or professional athletic setting, but does require physician supervision in all instances when a licensed athletic trainer is working outside of these settings. The Board agrees that licensed athletic trainers should be able to provide immediate response to injuries suffered by [page=109] athletes in athletic events that are outside the interscholastic, intercollegiate, intramural, or professional athletic setting. The Board will propose amendments to N.J.A.C. 13:35-10.6 so that a licensed athletic trainer can provide immediate response to an injury suffered by such an athlete.

57. COMMENT: A commenter suggests that the Board amend N.J.A.C. 13:35-10.6 to require a licensed athletic trainer working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting to ensure that he or she has a supervising physician, a written plan of care, and acts within the scope of practice of athletic trainers.

RESPONSE: The requirements suggested by the commenter are already imposed by N.J.A.C. 13:35-10.5.

58. COMMENT: One commenter asks why professional athletes will have access to more immediate evaluation and "treatment" than recreational athletes.

RESPONSE: The Board will propose amendments to N.J.A.C. 13:35-10.6 to permit licensed athletic trainers to provide immediate evaluation and athletic training services to athletes engaged in athletic events outside of the

interscholastic, intercollegiate, intramural, and professional athletic setting.

59. COMMENT: A commenter believes that there is legislation that requires a licensed athletic trainer to be at every high school athletic event. The commenter asks why the regulations impose site restrictions when this legislation indicates the importance of immediate care and rehabilitation.

RESPONSE: The Board is not aware of any legislation that imposes the requirements posited by the commenter.

60. COMMENT: One commenter suggests that the Board amend N.J.A.C. 13:35-10.6 to permit licensed athletic trainers working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting to provide immediate care to injured athletes without a physician examination. The rule should also be amended to require that follow-up athletic training services beyond those provided the day of an athletic event be provided only after a physician examines the athlete and refers him or her to the licensed athletic trainer.

RESPONSE: The Board will propose amendments to N.J.A.C. 13:35-10.6 to permit licensed athletic trainers to provide immediate response to an injury suffered by an athlete outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

61. COMMENT: Two commenters suggest that the Board amend N.J.A.C. 13:35-10.6 to exclude youth sports, summer camps, sports tournaments, and league sports from the physician referral requirement.

RESPONSE: The two-tiered scope of practice recognized by N.J.S.A. 45:9-37.37 does not recognize a distinction between youth sports, summer camps, sports tournaments, and league sports and other settings outside of the interscholastic, intercollegiate, intramural, or professional athletic setting. The Board cannot change the rule as the commenter suggests because the statute does not recognize such an exclusion. As noted in response to prior comments, the Board will propose future amendments to N.J.A.C. 13:35-10.6 to permit licensed athletic trainers to provide an immediate response to injuries suffered by an athlete during an athletic event outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

62. COMMENT: Several commenters are concerned that N.J.A.C. 13:35-10.6 will reduce employment opportunities for licensed athletic trainers as they will not be able to work outside of an interscholastic, intercollegiate, intramural, or professional athletic setting.

RESPONSE: Nothing in N.J.A.C. 13:35-10.6 prohibits licensed athletic trainers from working outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

63. COMMENT: A commenter contends that licensed athletic trainers can reduce health care spending by assessing an injury to an athlete and determining if further medical attention is warranted. The commenter contends that N.J.A.C. 13:35-10.6 limits a licensed athletic trainer's ability to provide this service.

RESPONSE: The Board agrees that immediate response from a licensed athletic trainer can help to reduce health care spending and will propose future amendments to N.J.A.C. 13:35-10.6 to permit licensed athletic trainers to provide immediate response to an injury suffered during an athletic event.

64. COMMENT: One commenter contends that, if athletic trainers are not permitted to work outside of an interscholastic, intercollegiate, intramural, or professional athletic setting, individuals who are injured will spend more money to find out what happened to them and that many will not get "treatment" because it is too expensive.

RESPONSE: The rules do not prohibit a licensed athletic trainer from working outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

65. COMMENT: One commenter contends that N.J.A.C. 13:35-10.6 prohibits athletes and their families from obtaining the same healthcare during the summer that is available to them during the school year.

RESPONSE: The future amendments that the Board will propose to N.J.A.C. 13:35-10.6 will allow licensed athletic

trainers to provide immediate response to an injury suffered during an athletic event and will allow athletes and their families to obtain the same care in the summer that is available during the school year.

66. COMMENT: A commenter is concerned that N.J.A.C. 13:35-10.6 will prevent licensed athletic trainers from providing first aid or preventative measures to athletes when they are working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting.

RESPONSE: The future amendments to N.J.A.C. 13:35-10.6 that the Board will propose will permit licensed athletic trainers to provide immediate response to injuries suffered during an athletic event, including first aid.

67. COMMENT: Several commenters contend that licensed athletic trainers are the most qualified individuals to provide acute injury care. They contend that athletes sometimes do not recognize that they need to be treated.

RESPONSE: The Board will propose amendments in the future to N.J.A.C. 13:35-10.6 that will permit licensed athletic trainers to provide immediate response to injuries suffered during an athletic event, which includes acute injury care.

68. COMMENT: A commenter contends that the referral requirement in N.J.A.C. 13:35-10.6 need not be based upon a physician's physical examination of an athlete. Such a referral could be based upon communication between a licensed athletic trainer and his or her supervising physician without the supervising physician ever seeing the athlete.

RESPONSE: N.J.A.C. 13:35-10.6 requires that a physician examine an athlete prior to referring the athlete for athletic training services.

69. COMMENT: A commenters asks where he can find physicians who will provide care to athletes during an athletic event. He is concerned with how well such physicians will know the athlete they are caring for and who will pay for the physicians to attend athletic events.

RESPONSE: N.J.A.C. 13:35-10.6 does not require that a physician be present during an athletic event.

70. COMMENT: A commenter asks for a definition of "referral." The commenter asks if a referral must be written on a prescription blank and if this prescription has to include a diagnosis. The commenter also asks if the referral has to identify a specific clinic or athletic training facility.

RESPONSE: A referral is the sending or directing of an athlete to a licensed athletic trainer for athletic training services. The Board does not believe it is necessary to require that this referral be written as a prescription with a diagnosis. As long as a physician has examined an athlete and determined that athletic training services are appropriate for that athlete, the requirements of N.J.A.C. 13:35-10.6 will be met. The referral need not identify a specific clinic or athletic training facility.

71. COMMENT: One commenter asks why a licensed athletic trainer working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting needs to have both a plan of care and a referral from a physician. The commenter asks if a physician referral could be seen as a plan of care.

RESPONSE: A plan of care is between a licensed athletic trainer and a physician and is based upon the judgment of a physician as to the licensed athletic trainer's abilities. A referral is specific to an athlete and is based upon the physician's physical examination of the athlete. A referral cannot be seen as a plan of care.

72. COMMENT: One commenter is concerned that N.J.A.C. 13:35-10.6 will create a conflict of interest for a licensed athletic trainer who is working in a clinic. The commenter posits a situation in which a licensed [page=110] athletic trainer receives a referral from a physician who is a competitor for the supervising physician in the clinic. The commenter contends that this is not an issue in other medical professions because they do not require supervision and a physician referral.

RESPONSE: The Board does not see how N.J.A.C. 13:35-10.6 creates a conflict of interest. If a licensed athletic

trainer receives a referral from a physician for an athlete, the licensed athletic trainer can provide services for that athlete regardless of whether the licensed athletic trainer works in a clinic for another physician.

73. COMMENT: A commenter understands that a referral would be appropriate for injuries that are outside of those that licensed athletic trainers usually see, but questions why it would be necessary for the vast majority of injuries that licensed athletic trainers usually deal with.

RESPONSE: A referral is not based on types of injuries, a referral is based upon a physical examination of an athlete. The overall health of an athlete and how a particular injury interacts with this overall health is the reason why a referral is necessary before a licensed athletic trainer can provide services outside the interscholastic, intercollegiate, intramural, or professional athletic setting.

74. COMMENT: One commenter contends that youths are the ones who most need athletic training services and that N.J.A.C. 13:35-10.6 prevents them from getting these services.

RESPONSE: The Board will propose amendments in the future to N.J.A.C. 13:35-10.6 to permit licensed athletic trainers to provide immediate response to injuries.

75. COMMENT: A commenter contends that requiring a physician referral is unnecessary. If she believes an athlete should be referred to a physician, she is capable of making that decision in the college or corporate setting.

RESPONSE: The commenter misunderstands the requirements of N.J.A.C. 13:35-10.6. The rule does not require a licensed athletic trainer to refer athletes to physicians. It requires that a physician examine a patient before a licensed athletic trainer provides services to that athlete.

76. COMMENT: A commenter contends that licensed athletic trainers can provide services between an injury occurring and an athlete seeing a physician, which can reduce healing time for an injury. N.J.A.C. 13:35-10.6 impedes this process.

RESPONSE: The Board will propose amendments in the future to N.J.A.C. 13:35-10.6 to permit licensed athletic trainers to provide immediate response to injuries.

77. COMMENT: Two commenters contend that they have the education and clinical experience to identify injuries that are outside of the scope of practice for licensed athletic trainers.

RESPONSE: The Board does not dispute the fact that licensed athletic trainers can identify injuries that they cannot treat. This does not change the fact that the rules must set forth a scope of practice for licensed athletic trainers or the importance of a physician examination of an athlete before a licensed athletic trainer provides services to an athlete outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

78. COMMENT: A commenter asks why verbal communication with a physician is not permitted when a licensed athletic trainer is working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting.

RESPONSE: Nothing in the rules prohibits verbal communication with a physician when a licensed athletic trainer is working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting.

79. COMMENT: One commenter contends that, requiring an athlete to see a physician before seeing a licensed athletic trainer is no guarantee that he or she will get care from a licensed athletic trainer when an athlete is outside of an interscholastic, intercollegiate, intramural, or professional athletic setting. The commenter is concerned that a physician may clear an athlete to return to a sport without a licensed athletic trainer there to speak to parents and protect the athlete.

RESPONSE: The commenter is correct that there is no guarantee that an athlete outside of an interscholastic, intercollegiate, intramural, or professional athletic setting will see a licensed athletic trainer. This is true regardless of whether or not the rules require a physician to examine the athlete. The Board points out that, if a physician clears an

athlete to return to a sport, there is no reason to believe that the physician is endangering the athlete.

80. COMMENT: One commenter believes that the new rules will prohibit her from working at a summer camp unless she has a supervising physician.

RESPONSE: The commenter is correct, N.J.S.A. 45:9-37.37 prohibits a licensed athletic trainer from providing athletic training services outside of the interscholastic, intercollegiate, intramural, or professional athletic setting unless he or she has a supervising physician.

81. COMMENT: One commenter contends that preventing athletic trainers from making informed decisions as to patient care is an insult to the intelligence of athletic trainers and their education.

RESPONSE: Nothing in the rules prohibits a licensed athletic trainer from making informed decisions as to the care an athlete should receive.

82. COMMENT: A commenter asks how the new rules will affect licensed athletic trainers who work in private schools. The commenter contends that such licensed athletic trainers do not have a supervising school physician and is concerned that the new rules will prohibit these licensed athletic trainers from working.

RESPONSE: As has always been the case, a licensed athletic trainer who works for a private school is working in the interscholastic or intramural setting and must comply with all of the requirements imposed on athletic trainers who work in that setting. This includes physician supervision when the licensed athletic trainer provides physical treatment modalities.

83. COMMENT: One commenter is concerned that the new rules will prevent a licensed athletic trainer who works for a school from entering a playing field to evaluate athletes and treat injuries until a physician has entered the playing field and written a note that authorizes her to practice.

RESPONSE: N.J.A.C. 13:35-10.6 does not require that a physician refer an athlete for athletic training services when a licensed athletic trainer is working in the interscholastic, intercollegiate, intramural, or professional athletic setting.

84. COMMENT: A commenter contends that the new rules only address youth sports and asks why the new rules do not address a licensed athletic trainer working in orthopedic offices as assistants to physicians or in physical therapy clinics.

RESPONSE: The new rules address the provision of athletic training services in the interscholastic, intercollegiate, intramural, and professional athletic settings, and the provision of services outside of such settings. The new rules address working in orthopedic offices or in physical therapy clinics as settings outside of the interscholastic, intercollegiate, intramural, and professional athletic setting.

85. COMMENT: A commenter supports amendments that permit athletic trainers to apply braces, modalities, and conditioning programs.

RESPONSE: The Board thanks the commenter for his support.

86. COMMENT: A commenter contends that, when a licensed athletic trainer is working at a sports camp, he or she is not working as an athletic trainer but as a health care provider or first aider. Injuries or illnesses beyond emergency "treatment" or first aid are referred to a parent or physician. The commenter is concerned that N.J.A.C. 13:35-10.6 will prevent a licensed athletic trainer from working in this capacity.

RESPONSE: Whenever a licensed athletic trainer is providing services, he or she is acting as a licensed athletic trainer subject to the rules of N.J.A.C. 13:35-10. A licensed athletic trainer cannot claim that he or she is working as a health care provider or first aider who is not subject to the rules. The Board will propose amendments to N.J.A.C. 13:35-10.6 in the future to permit licensed athletic trainers to provide immediate response to an injury.

87. COMMENT: One commenter contends that the inclusion of the phrase "or any other setting pursuant to a referral from a physician" in N.J.A.C. 13:35-10.7(a) violates the intent of P.L. 2007, c. 323.

RESPONSE: The Board will propose amendments to N.J.A.C. 13:35-10.7 in the future to recognize that a licensed athletic trainer may provide evaluation and immediate athletic training services for an injury suffered by an athlete in a setting outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

88. COMMENT: A commenter contends that N.J.A.C. 13:35-10.7(a) imposes more restrictions on licensed athletic trainers than are imposed on personal trainers who have less education.

[page=111] RESPONSE: The commenter is correct that N.J.A.C. 13:35-10.7(a) imposes restrictions on licensed athletic trainers that are not imposed on personal trainers. Personal trainers are not licensed and cannot provide athletic training services.

89. COMMENT: A commenter asks if N.J.A.C. 13:35-10.7(a)1iv means that a licensed athletic trainer working outside of an interscholastic, intercollegiate, intramural, or professional athletic setting needs a referral from a physician before he or she can provide preventative taping.

RESPONSE: The Board will propose amendments to N.J.A.C. 13:35-10.7 in the future to permit licensed athletic trainers to apply bandaging, wrapping, taping, padding, bracing, and splinting procedures to uninjured parts of an athlete's body without a referral from a physician.

90. COMMENT: One commenter supports the articulation of modalities that athletic trainers use every day and found the plan of care guidelines to be helpful.

RESPONSE: The Board thanks the commenter for her support.

91. COMMENT: A commenter contends that the use of physical treatment modalities is listed under first aid in N.J.A.C. 13:35-10.7. The commenter contends that, if a licensed athletic trainer provides first aid and then administers physical treatment modalities, the licensed athletic trainer has to make an evaluation or diagnosis. The commenter asks if a licensed athletic trainer would have to call a physician when he or she goes from providing first aid to administering treatment modalities.

RESPONSE: The commenter misunderstands the structure of N.J.A.C. 13:35-10.7. The use of physical modalities is not listed under first aid, it is in a separate subsection and the provision of physical modalities is not related to the provision of first aid. A licensed athletic trainer would not be required to call a physician if he or she administers treatment modalities after providing first aid if he or she is working in an interscholastic, intercollegiate, intramural, or professional athletic setting. The Board will propose amendments in the future that will permit licensed athletic trainers to administer treatment modalities after providing first aid when he or she is providing immediate athletic training services for an injury suffered outside of these settings.

92. COMMENT: One commenter believes that new N.J.A.C. 13:35-10.7 will require a licensed athletic trainer to obtain approval from a physician whenever he or she wants to apply any modality. The commenter believes that applying modalities should be part of an athletic trainer's basic scope of practice. He contends that an athletic trainer who was not sufficiently educated in applying modalities would not have passed the Board of Certification examination. The commenter asks why an athletic trainer must be overseen by a physician after all of the education he or she receives.

RESPONSE: N.J.A.C. 13:35-10.7 does not require a licensed athletic trainer to obtain physician approval whenever he or she applies a physical modality. The rule requires that a physician refer a patient to the licensed athletic trainer after examining the patient before a licensed athletic trainer may apply physical modalities in a setting outside the interscholastic, intercollegiate, intramural, or professional athletic setting. The definition of "athletic training" in N.J.S.A. 45:9-37.36 dictates that a licensed athletic trainer has a plan of care designed by and overseen by a physician when he or she applies physical treatment modalities.

93. COMMENT: Several commenters contend that licensed athletic trainers can diagnose injuries. According to the commenters, national accreditation and Board of Certification preparation documents indicate that licensed athletic trainers diagnose injuries. A commenter suggests that N.J.A.C. 13:35-10.7(d) be amended to state: "A licensed athletic trainer may diagnose an injury prior to implementing or while maintaining the plan of care to exercise professional judgment to determine whether any intervening circumstances may adversely affect an athlete's ability to participate in or continue to participate in the plan of care."

RESPONSE: The diagnosis of injuries is the practice of medicine in which a licensed athletic trainer may not engage. A licensed athletic trainer is permitted to evaluate injuries in order to provide athletic training services.

94. COMMENT: A commenter suggests that N.J.A.C. 13:35-10.7(d) be amended to require that, after evaluation and initial diagnosis, a licensed athletic trainer refer any condition that falls outside the plan of care or scope of practice to his or her supervising physician.

RESPONSE: The Board points out that N.J.A.C. 13:35-10.7(f) requires a licensed athletic trainer to refer an athlete to a health care professional if athletic training is contraindicated or conditions are present that require services outside of the scope of a licensed athletic trainer's practice.

95. COMMENT: A commenter asks what "professional judgment" means as the term is used in N.J.A.C. 13:35-10.7. The commenter questions if this is an accepted medical term and whether the term "evaluate" is used in practice acts for other professions. The commenter contends that the Board of Certification and the Commission on Accreditation of Athletic Training Education currently use the term "diagnosis."

RESPONSE: The Board believes that "professional judgment" is an easily understood term, which means that a licensed athletic trainer uses his or her education and experience to make determinations as to a patient's condition. The Board points out that diagnosing is the practice of medicine in which licensed athletic trainers may not engage.

96. COMMENT: A commenter asks the Board to include injury evaluation as part of a licensed athletic trainer's scope of practice. The commenter recognizes that the Board has declared that only a physician may diagnose, but contends that licensed athletic trainers perform injury assessments, which do not constitute "diagnoses." The commenters point out that N.J.A.C. 13:35-10.8 requires licensed athletic trainers to document progress notes in accordance with the evaluated findings in their records.

RESPONSE: The Board will propose amendments to N.J.A.C. 13:35-10.7 in the future to recognize that injury evaluation is part of a licensed athletic trainer's scope of practice.

97. COMMENT: A commenter contends that the new rules permit a licensed athletic trainer to perform first aid. The commenter contends that providing first aid entails evaluation and diagnosis.

RESPONSE: The new rules do permit licensed athletic trainers to perform first aid. The Board disagrees with the commenter that performing first aid entails diagnosis. Diagnosis is the practice of medicine in which a licensed athletic trainer may not engage. First aid entails the evaluation of injuries.

98. COMMENT: One commenter believes that N.J.A.C. 13:35-10.7(e) implies that licensed athletic trainers are not health care professionals. The commenter suggests that the phrase "refer an athlete to a health care professional" be amended to read "refer an athlete to the appropriate health care professional."

RESPONSE: Licensed athletic trainers are health care professionals and the Board does not believe that N.J.A.C. 13:35-10.7(f) implies otherwise. The Board will not change the regulation as the commenter suggests.

99. COMMENT: One commenter points out that N.J.A.C. 13:35-10.7 requires licensed athletic trainers to refer athletes to a health care professional if athletic training is contraindicated. The commenter asks whether licensed athletic trainers are health care professionals. The commenter also asks how a licensed athletic trainer can refer an athlete if licensed athletic trainers are prohibited from evaluating or diagnosing.

RESPONSE: As stated in the Response to Comment 98, licensed athletic trainers are health care professionals who are permitted to evaluate athletes. Licensed athletic trainers may not diagnose injuries as that is the practice of medicine.

100. COMMENT: Several commenters support new N.J.A.C. 13:35-10.8, which establishes recordkeeping standards. One commenter believes that this rule will improve records kept by licensed athletic trainers. Another supports the provision that permits licensed athletic trainers to charge for the reproduction of records. A commenter contends that currently some licensed athletic trainers keep virtually no records.

RESPONSE: The Board thanks the commenters for their support.

101. COMMENT: One commenter asks if the Board has suggested or recommended forms for recordkeeping to standardized records kept by all licensed athletic trainers.

RESPONSE: The Board does not have standardized forms for recordkeeping.

[page=112] 102. COMMENT: One commenter maintains records by keeping daily notes. The school nurse keeps official records for athletes. The commenter would find it difficult to maintain records that comply with the dictates of N.J.A.C. 13:35-10.8 as it will take time that the commenter now spends providing care to athletes. The commenter does not believe that N.J.A.C. 13:35-10.8 is appropriate in a high school setting.

RESPONSE: The Board believes that as part of professional practice all licensed athletic trainers must keep records on the athletes to whom they provide services.

103. COMMENT: Three commenters are concerned with recordkeeping requirements when athletes suffer minor injuries. They believe that complying with recordkeeping requirements for such injuries would be burdensome. One commenter asks the Board to clarify the injuries for which measurable goals and progress notes are required. The commenter asks if such records are required when a licensed athletic trainer treats a minor injury that does not result in time lost from participating in sports.

RESPONSE: As part of professional practice, all licensed athletic trainers must keep records on the athletes to whom they provide services, regardless as to the severity of an injury that is the impetus for such services. Pursuant to N.J.A.C. 13:35-10.8, all records, without regard to the type of injury an athlete suffers, must include measurable goals and progress notes.

104. COMMENT: One commenter contends that a comprehensive plan of action with short- and long-term goals should be maintained only for athletes who have not been cleared to return to activity. The commenter suggests that the Board amend N.J.A.C. 13:35-10.8 to clarify that it only applies when an athlete has not been cleared to return to play.

RESPONSE: The Board does not agree that comprehensive records are needed only for athletes who have not been cleared to return to activity. A record must be kept for any athlete who receives services from a licensed athletic trainer.

105. COMMENT: A commenter asks how records are to be kept when a licensed athletic trainer is providing services for a group that does not employ an athletic trainer.

RESPONSE: A licensed athletic trainer must keep records any time he or she provides services to athletes, regardless of whether or not he or she is employed to provide such services.

106. COMMENT: A commenter contends that substitute licensed athletic trainers leave records with the athletic department of a school when they end their tenure at a school. The commenter points out that athletic departments are not subject to the requirements of N.J.A.C. 13:35-10.8. The commenter asks if substitute licensed athletic trainers should take records with them when they leave a school. The commenter also asks if a licensed athletic trainer must maintain a copy of the plan of care as part of their records and maintain it for seven years.

RESPONSE: It is the responsibility of a licensed athletic trainer to maintain records regardless of his or her employment status. The Board points out that N.J.A.C. 13:35-10.8(f) requires that a licensed athletic trainer maintain his or her plan of care as part of his or her records.

107. COMMENT: A commenter contends that it is unclear as to who is responsible for maintaining records under the rule requiring that a written record regarding "treatment" of an injury be created by a licensed athletic trainer and maintained for seven years.

RESPONSE: The commenter refers to a provision that was in N.J.A.C. 13:35-10.5(f). This provision has been deleted.

108. COMMENT: One commenter contends that it will be difficult for licensed athletic trainers in high schools to maintain the records required by N.J.A.C. 13:35-10.8 due to the high volume of athletes they see.

RESPONSE: While it may be difficult for licensed athletic trainers to maintain records, it is necessary to maintain such records in order to protect the athletes who receive athletic training services from licensed athletic trainers so that there can be continuity of care and a record of how athletes responded to treatment.

109. COMMENT: One commenter contends that it is unreasonable to require a license number to appear on every page of a record. A license number should only be provided if it is needed.

RESPONSE: A license number is needed on every page of a record so that the licensed athletic trainer providing services is clearly identified throughout the record.

110. COMMENT: One commenter believes that N.J.A.C. 13:35-10.8 requires licensees to sign their name and provide their license number at the end of written medical records. The commenter asks if a stamp may be used to provide the signature and license number.

RESPONSE: N.J.A.C. 13:35-10.8(c) requires that a licensed athletic trainer's full name and license number appear on every page of a record. The rule does not require that a signature appear on every page. A licensed athletic trainer may use a stamp to provide his or her name and license number.

111. COMMENT: A commenter is concerned that requiring per diem licensed athletic trainers to maintain records for seven years will be a violation of the Health Information Privacy Protection Act. The commenter contends that taking records out of an educational institution and having a licensed athletic trainer personally maintain the records will allow others to view the records and violate confidentiality of those records.

RESPONSE: Requiring licensed athletic trainers to maintain records will not necessarily result in violations of the Health Information Privacy Protection Act. Licensed athletic trainers who maintain records outside of educational institutions must take steps to ensure that these records are maintained confidentially and in a manner that is consistent with the Health Information Privacy Protection Act.

112. COMMENT: A commenter asks how recordkeeping requirements will affect licensed athletic trainers who work at a sports camp on a per diem basis. The commenter asks where these records will go, who will keep the records safe and private and how will the Health Information Privacy Protection Act be enforced for these records.

RESPONSE: N.J.A.C. 13:35-10.8 requires licensed athletic trainers to maintain records whenever they provide services. This includes instances when licensed athletic trainers are working for sports camps. It is the responsibility of the licensed athletic trainer to maintain these records, keep them safe and ensure compliance with the Health Information Privacy Protection Act.

113. COMMENT: A commenter contends that N.J.A.C. 13:35-10.8(c)5, which requires records to include established measurable goals of the athletic training with stated time frames, the type of athletic training, and the frequency and expected duration of athletic training, is unclear. The commenter asks if this applies to one session or to the overall goal of an athlete's treatment plan.

RESPONSE: The rule applies to the overall goal of an athlete's treatment plan.

114. COMMENT: A commenter is unclear as to the use of the phrase "his or hers" in N.J.A.C. 13:35-10.8(c)10. The commenter asks if this phrase should be "the athlete's" instead.

RESPONSE: The phrase "his or hers" is not used in N.J.A.C. 13:35-10.8(c)10.

115. COMMENT: One commenter points out that N.J.A.C. 13:35-10.8 requires the same records to be kept regardless of setting. The commenter contends that in the past licensed athletic trainers working at camps or tournaments were told to maintain an injury log in a string bound notebook. Using such a notebook ensures that pages cannot be torn out to alter records. The commenter contends that many games occur at once in a camp or tournament setting and that multiple injuries can occur at the various games. The commenter contends that maintaining records for every injured athlete would be impossible. The commenter suggests that N.J.A.C. 13:35-10.8 be amended to permit licensed athletic trainers working at camps or tournaments to maintain records in a string bound notebook. Licensed athletic trainers should be required to initial the bottom of every entry in this notebook so that they cannot add information to the record after the fact.

RESPONSE: The Board is not sure who told the commenter that licensed athletic trainers working at camps or tournaments should maintain records in string bound notebooks. Under the previous law, licensed athletic trainers were not permitted to provide athletic training services at camps or tournaments as these settings are not interscholastic, intercollegiate, intramural, or professional athletic settings. Under the new rules, a licensed athletic trainer will be required to maintain records of athletic training services provided to athletes in any setting that comply with the requirements of N.J.A.C. 13:35-10.8.

[page=113] 116. COMMENT: Two commenters are concerned that it would be expensive for schools to purchase computer recordkeeping software.

RESPONSE: N.J.A.C. 13:35-10.9 does not require licensed athletic trainers to maintain records on computers and schools will not have to purchase computer recordkeeping software.

117. COMMENT: A commenter asks if N.J.A.C. 13:35-10.9 requires licensed athletic trainers to use computers to maintain records.

RESPONSE: N.J.A.C. 13:35-10.9 does not require licensed athletic trainers to use computers to maintain records.

118. COMMENT: A commenter contends that licensed athletic trainers usually take written notes while evaluating athletes and that these notes are entered into a computer when time permits. The commenter is concerned that the software required by N.J.A.C. 13:35-10.9, which automatically dates an entry when it is made, could result in entries being dated on a different day than when an evaluation was performed. The commenter recommends that N.J.A.C. 13:35-10.9 be amended to recognize that the date an entry is made in computer records may be different than the date on which services were provided.

RESPONSE: Inputting a record onto a computer on a different date than the services were provided is not a violation of N.J.A.C. 13:35-10.9 and it is not necessary to change the rule as the commenter suggests.

119. COMMENT: One commenter suggests that the Board of Certification develop a program that would allow athletic trainers to maintain records on a computer.

RESPONSE: The Board has no ability to direct the Board of Certification to develop a program as the commenter suggests.

120. COMMENT: N.J.A.C. 13:35-10.10(a) requires a licensed athletic trainer to provide a copy of an athletes record to any person designated by the athlete to receive the record. A commenter is concerned that the rule does not specify the proof necessary to indicate that an athlete has designated an individual to receive a record. The commenter contends that anyone could produce a document indicating that an athlete has designated that person to receive records.

RESPONSE: N.J.A.C. 13:35-10.8(d)1 requires a licensed athletic trainer to get an athlete to sign a document authorizing the release of the athlete's records. It is a licensed athletic trainer's responsibility to ensure the validity of a designation of an individual to whom records may be released. If a licensed athletic trainer is not confident that such a designation is valid, he or she should contact the athlete to verify that the athlete has authorized the release of records to the designated individual.

121. COMMENT: N.J.A.C. 13:35-10.10(d)1 requires licensed athletic trainers to secure and maintain a current written authorization signed by an athlete or his or her authorized representative when the licensed athletic trainer releases a record to a specified individual or entity. A commenter is confused by this provision and asks the Board to clarify what "secure and maintain a signed record release" means.

RESPONSE: In order to comply with N.J.A.C. 13:35-10.10(d)1, when a licensed athletic trainer releases a record to an individual designated by an athlete he or she should have the athlete sign a document that authorizes the licensed athletic trainer to release the record. The licensed athletic trainer must maintain this document as part of his or her records.

122. COMMENT: One commenter believes that the new advertising rules will result in more individuals receiving services from licensed athletic trainers. The commenter asks why the Board has taken so long to permit licensed athletic trainers to advertise.

RESPONSE: Licensed athletic trainers were not prohibited from advertising in the past. The Board did not have advertising rules in the past due to the fact that licensed athletic trainers could not work outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

123. COMMENT: A commenter is confused by the advertising rules because she believes that, when athletic trainers are working in a clinical setting, they are working under the supervision of a physician and that they could not have their own practice.

RESPONSE: Nothing prohibits a licensed athletic trainer from having his or her own practice. Such a licensed athletic trainer would be required to have a plan of care with a supervising physician, but he or she would not be required to work for that physician.

124. COMMENT: One commenter asks how a licensed athletic trainer who works for a clinic may advertise services without violating N.J.A.C. 13:35-10.11.

RESPONSE: Nothing in N.J.A.C. 13:35-10.11 prohibits a licensed athletic trainer working in a clinic from advertising services.

125. COMMENT: Two commenters are concerned with N.J.A.C. 13:35-10.11(f), which prohibits a licensed athletic trainer from soliciting an athlete. The commenters are concerned that this provision would prevent licensed athletic trainers from marketing their services to athletes. One of the commenters asks the Board to define "solicitation." The commenter objects to the provision as it restricts the ability to market services, which is a common practice among other health care providers.

RESPONSE: N.J.A.C. 13:35-10.11(f) does not prohibit the marketing of services, it prevents a licensed athletic trainer from soliciting an athlete by approaching an individual athlete to entice him or her to engage the licensed athletic trainer to provide athletic training services. A similar regulation is imposed by other licensing boards in advertising rules.

126. COMMENT: Two commenters are concerned that N.J.A.C. 13:35-10.11(i) would prohibit licensed athletic trainers from using "ATC" in advertisements. The commenters point out that the ATC credential is issued by the Board of Certification and that it is not a specialty certification. The commenters contend that this credential is the credential used by all licensed athletic trainers nationwide.

RESPONSE: The ATC credential is not a specialty credential that is subject to N.J.A.C. 13:35-10.11(i).

127. COMMENT: One commenter contends that N.J.A.C. 13:35-10.11(i) should require that all acronyms for certifications be written out, not just specialty certifications. This would include ATC and LAT.

RESPONSE: The Board requires licensed athletic trainers to include the full name of specialty certifications identified in advertisements because such certifications are not easily understood by the public. The public easily understands what "ATC" and "LAT" mean in relation to an athletic trainer. The Board points out that N.J.S.A. 45:9-37.46 recognizes that a licensed athletic trainer may use the acronym "LAT."

128. COMMENT: A commenter asks if the prohibitions in N.J.A.C. 13:35-10.11(i) apply to business cards and stationery. The commenter also asks if the rule applies to licensed athletic trainers working in schools or professional settings. The commenter contends that business cards exchanged in schools and professional settings are not used for advertising purposes but to exchange contact information. The commenter contends that physicians, nurses, and other health care professionals use acronyms for certification without providing the names of the certifications and that licensed athletic trainers should not be required to provide names for certifications when other health care professionals are not required to do so.

RESPONSE: N.J.A.C. 13:35-10.11(i) applies to business cards and stationery; it applies to all licensed athletic trainers, regardless of where they work. The Board points out that licensed physical therapists are required to provide the names of certifications they use in advertisements in order to ensure that the public clearly understands the nature of the specialty certifications. The same concern exists for licensed athletic trainers.

129. COMMENT: One commenter points out that the regulation dealing with advertising specialty certification acronyms for the State Board of Physical Therapy Examiners, N.J.A.C. 13:39A-8.1(i), includes a provision that states that:

A licensed physical therapist who has included the full name of a certification and certifying entity in an advertisement pursuant to (i) above may use initials or acronyms for that certification immediately following its full name. For example, a licensed physical therapist who indicates that he or she is an Orthopaedic Clinical Specialist certified by the American Board of Physical Therapists in an advertisement may use the acronyms OCS and ABPTS after these full names (Orthopaedic Clinical Specialist (OCS) by the American Board of Physical Therapists (ABPTS)).

The commenter asks that the Board adopt similar language for licensed athletic trainers.

RESPONSE: The Board does not believe it is necessary to change the rule as the commenter requests. If the Board becomes aware that the new rule is burdensome for licensed athletic trainers and that the suggested [page=114] amendment would alleviate this burden, it will consider amending the rule at a later date.

130. COMMENT: A commenter recommends that N.J.A.C. 13:35-10.11(i) be amended so that licensed athletic trainers could use acronyms multiple times in an advertisement, as long as the full name for that acronym is used at least once in the advertisement.

RESPONSE: The Board does not believe that the commenter's recommended change would provide the public with clarity as to the nature of a specialty certification and will not change the rule as the commenter suggests.

131. COMMENT: A commenter asks if State-issued certifications, like an EMT-B (Emergency Medical Technician - Basic), are considered specialty certifications subject to N.J.A.C. 13:35-10.11(i).

RESPONSE: State-issued certifications are not specialty certifications.

132. COMMENT: A commenter recognizes that a string of acronyms after a licensed athletic trainer's name can be confusing but contends that providing the full name of certifications would fill an entire business card. The commenter contends that, if someone wants to know what a certification means, he or she can look up the certification on the internet.

RESPONSE: The Board believes it is a licensed athletic trainer's responsibility to be clear as to the nature of specialty certifications identified in an advertisement. It is not the consumer's responsibility to research the meaning of a specialty certification acronym.

133. COMMENT: One commenter asks if N.J.A.C. 13:35-10.14 applies to licensed athletic trainers who work in a school or professional setting and who use business cards solely for exchange of contact information.

RESPONSE: N.J.A.C. 13:35-10.14 applies to all licensed athletic trainers regardless of where they work.

134. COMMENT: A commenter contends that N.J.A.C. 13:35-10.17 should require that licensed athletic trainers use the full title "Licensed Athletic Trainer" or "Athletic Trainer" if the licensed athletic trainer uses the acronym "LAT" or "AT" in order to be consistent with N.J.A.C. 13:35-10.11(i).

RESPONSE: "LAT" or "AT" are not specialty certifications subject to N.J.A.C. 13:35-10.11(i). The Board believes that these acronyms are easily understood when used by licensed athletic trainers and that the full title is not needed in order to provide clarity for consumers.

135. COMMENT: One commenter points out that the national designation for athletic trainers is "ATC." The commenter recommends that N.J.A.C. 13:35-10.17 be amended to require licensed athletic trainers to use this acronym with the addition of "-L" at the end of the acronym to indicate that the athletic trainer is licensed.

RESPONSE: The Board points out that "LAT" is the acronym recognized in N.J.S.A. 45:9-37.46.

136. COMMENT: Four commenters contend that the professionally accepted practice in health care is to display your highest academic degree after your name followed by licenses or certifications you hold. The commenters contend that N.J.A.C. 13:35-10.17 conflicts with this accepted standard of practice.

RESPONSE: The Board believes that licensure status has primary importance for establishing an individual's ability to practice in New Jersey and that identification of licensure status should come before identification of academic degrees.

137. COMMENT: One commenter disagrees with the fee.

RESPONSE: The fees charged by the Board were not the subject of the proposed amendments or new rules. The fees charged by the Board are set in order to cover the expenses it incurs in regulating licensed athletic trainers and have not changed as a result of the new rules.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted amendments.

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 10. ATHLETIC TRAINERS

13:35-10.2 Definitions

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

...

"Athlete" means an individual who participates in strenuous physical exercise, physical conditioning or a sport.

"Athletic training" means the practice of physical conditioning and reconditioning of athletes and the prevention of injuries incurred by athletes. "Athletic training" also includes the application of physical treatment modalities to athletes under a plan of care designed and overseen by a supervising physician licensed in New Jersey, as recommended by the Advisory Committee and defined in N.J.A.C. 13:35-10.7(b).

...

"Bracing" means the provision of fabric and elastic supports, corsets, arch supports, trusses, elastic hose, canes, crutches, cervical collars, dental appliances or other similar devices carried in stock and sold by drug stores, department stores, corset shops or surgical supply facilities.

"Licensed athletic trainer" means an individual who is licensed by the Board to practice athletic training.

"Physician" means a physician and surgeon licensed pursuant to N.J.S.A. 45:9-1 et seq.

"Plan of care" means a documented arrangement between a licensed athletic trainer and a physician, which sets forth:

1. The physical treatment modalities a licensed athletic trainer will utilize while providing services to athletes in an interscholastic, intercollegiate, intramural or professional athletic setting; and
2. Any athletic training services, including physical treatment modalities, the athletic trainer will provide when he or she is working with an athlete outside of an interscholastic, intercollegiate, intramural or professional athletic setting.

"Supervising physician" means a physician with whom an athletic trainer has a plan of care.

"Supervision" means that a physician licensed in this State is accessible to a licensed athletic trainer, either on-site or through voice communication, during athletic training.

13:35-10.3 Application for licensure

(a) An applicant for athletic trainer licensure shall submit to the Board:

1. (No change.)
2. Proof that the applicant has completed a program of education, training and experience, which is approved by the Commission on Accreditation of Athletic Training Education, or its successor;
3. (No change.)
4. The application fee pursuant to N.J.A.C. 13:35-10.19.

13:35-10.4 Licensure; biennial license renewal; license suspension; reinstatement of suspended license; inactive status; return from inactive status

(a) All licenses issued by the Board shall be issued for a two-year licensure period. A licensed athletic trainer who seeks renewal of the license shall submit a completed renewal application and the renewal fee as set forth in N.J.A.C. 13:35-10.19 prior to the expiration date of the license.

(b) (No change.)

(c) If a licensed athletic trainer does not renew the license prior to its expiration date, the licensed athletic trainer may renew the license within 30 days of its expiration by submitting a renewal application, a renewal fee and a late fee, as set forth in N.J.A.C. 13:35-10.19. During this 30-day period, the license shall be valid, and the licensed athletic trainer

shall not be deemed to be practicing without a license.

(d) (No change.)

(e) A licensed athletic trainer whose license has been automatically suspended for five years or less for failure to renew pursuant to (d) above may be reinstated by the Board upon completion of the following:

1. Payment of the reinstatement fee and all past delinquent biennial renewal fees pursuant to N.J.A.C. 13:35-10.19; and

2. (No change.)

(f) In addition to fulfilling the requirements set forth in (e) above, a licensed athletic trainer whose license has been automatically suspended for more than three years who wishes to return to practice shall submit proof that he or she is currently certified by the National Athletic Trainers Association Board of Certification, or its successor.

[page=115] (g) In addition to fulfilling the requirements set forth in (e) and (f) above, a licensed athletic trainer whose license has been automatically suspended for more than five years who wishes to return to practice shall reapply for licensure and shall demonstrate that he or she has maintained proficiency. An applicant who fails to demonstrate to the satisfaction of the Board that he or she has maintained proficiency while suspended may be subject to an examination or other requirements as determined by the Board prior to reinstatement of his or her license.

(h) Renewal applications shall provide the licensed athletic trainer with the option of either active or inactive status. A licensed athletic trainer electing inactive status shall pay the inactive license fee set forth in N.J.A.C. 13:35-10.19 and shall not engage in practice.

(i) (No change in text.)

(j) In addition to fulfilling the requirements set forth in (i) above, a licensed athletic trainer who has been on inactive status for more than five years who wishes to return to the practice of athletic training shall reapply for licensure and shall demonstrate that he or she has maintained proficiency. An applicant who fails to demonstrate to the satisfaction of the Board that he or she has maintained proficiency while on inactive status may be subject to an examination or other requirements as determined by the Board prior to reinstatement of his or her license.

13:35-10.5 Plan of care guidelines

(a) Every licensed athletic trainer shall enter into a written plan of care with a supervising physician, which sets forth the practices in which a licensed athletic trainer shall engage in while providing physical treatment modalities to athletes in an interscholastic, intercollegiate, intramural or professional athletic setting and all athletic training services, including physical treatment modalities, provided outside of these settings. The plan of care shall be signed and dated by both the licensed athletic trainer and the supervising physician.

(b) A licensed athletic trainer and his or her supervising physician shall meet at least once a year to review the plan of care and revise it as necessary.

(c) A supervising physician shall be available, either in person or through voice communication, whenever a licensed athletic trainer is practicing athletic training.

(d) A licensed athletic trainer shall make a plan of care available to the Board upon request.

13:35-10.6 Practice outside of schools and professional teams

(a) If a licensed athletic trainer is working outside of an interscholastic, intercollegiate, intramural or professional athletic setting, the licensed athletic trainer shall provide athletic training services only when a physician (who may, in

this instance, be licensed in another state) has referred the athlete for athletic training after physically examining the athlete.

(b) When a licensed athletic trainer is working outside of an interscholastic, intercollegiate, intramural or professional athletic setting with an athlete, the licensed athletic trainer's plan of care shall include provisions for supervision from a supervising physician during all aspects of athletic training, not just during the provision of physical modalities.

13:35-10.7 Scope of practice

(a) A licensed athletic trainer in an interscholastic, intercollegiate, intramural or professional athletic setting, or any other setting pursuant to a referral from a physician, may provide to an athlete:

1. Conditioning programs for the prevention and management of injuries including:

i. Maintenance programs;

ii. Reconditioning programs;

iii. Exercise programs; and

iv. Bandaging, wrapping, taping, padding, bracing and splinting procedures;

2. Testing of neuromotor and musculoskeletal functional capability for the purposes of conditioning, reconditioning or otherwise evaluating the athlete's performance capability; and

3. First-aid.

(b) If they are included in the licensed athletic trainer's plan of care with a supervising physician, a licensed athletic trainer may administer physical treatment modalities, such as:

1. Cold;

2. Heat;

3. Light;

4. Sound;

5. Electricity;

6. Electromagnetic waves;

7. Water; and

8. Traditional mobilization techniques, rehabilitative exercise programs, traction and massage.

(c) A licensed athletic trainer shall not conduct electromyographic testing or nerve conduction velocity studies.

(d) A licensed athletic trainer shall not diagnose an injury or illness. Prior to implementing or continuing athletic training services, the licensed athletic trainer shall exercise professional judgment to determine whether any intervening circumstances have adversely affected the athlete's ability to participate in or continue to participate in athletic training.

(e) A licensed athletic trainer shall immediately refer an athlete to a health care professional licensed in this State if the

licensed athletic trainer has cause to believe that athletic training is contraindicated or symptoms or conditions are present that require services outside the scope of a licensed athletic trainer's practice.

13:35-10.8 Records

(a) A licensed athletic trainer shall prepare and maintain for each athlete a contemporaneous, permanent record that accurately reflects the evaluation and treatment of the athlete's illness or injury by the licensed athletic trainer.

(b) A licensed athletic trainer shall not falsify a record.

(c) A record shall include, in addition to personal identifying information, consents and disclosures, at least the following information:

1. The full name, as it appears on the license, and license number of the licensed athletic trainer who rendered care. This information shall be legible and shall appear at least once on each page of the record;

2. Dates of all athletic training services;

3. The findings of the evaluation including test results;

4. Documentation of health care practitioner referrals, if any;

5. Established measurable goals of the athletic training with stated time frames, the type of athletic training and the frequency and expected duration of athletic training;

6. A contemporaneous note that accurately represents the services rendered during the athletic training sessions including the components of athletic training, the athlete's response to activities and current status;

7. Progress notes in accordance with stated goals at a frequency consistent with the evaluated findings and changes in the athlete's conditions;

8. Communication with other health care professionals relative to the athlete's care;

9. A discharge or return to activity summary, which includes the reason for discharge from and outcome of athletic training relative to established goals at the time of discharge; and

10. Pertinent legal document(s).

(d) Records shall be maintained for at least seven years from the date of the last entry.

(e) A student in a Commission on Accreditation of Athletic Training Education approved athletic training education program may enter information in an athlete's record, as long as the licensed athletic trainer supervising the student co-signs his or her full name and license number next to the student's entry.

(f) A licensed athletic trainer shall maintain his or her plan of care as part of his or her records.

13:35-10.9 Use of personal or other computer to prepare records

(a) A licensed athletic trainer who prepares a record maintained solely on a personal or other computer shall use a write-protected program that:

1. Contains an internal permanently activated date and time recordation for all entries;

2. Automatically prepares a back-up copy of the file; and

3. Is designed in such manner that, after the licensed athletic trainer "signs" by means of a confidential personal code (CPC), the entry cannot be changed in any manner.

[page=116] (b) The licensed athletic trainer shall include in the record at least two forms of identification; for example, name and record number of the athlete or any other specific identifying information.

(c) The licensed athletic trainer shall finalize or "sign" the entry by means of a CPC. Where more than one individual is authorized to make entries into the computer file of any record, the licensed athletic trainer responsible for the facility at which the licensed athletic trainers work shall assure that each such person obtains a CPC and uses the program in the same manner.

(d) The licensed athletic trainer shall generate a hard copy of the complete record upon request.

13:35-10.10 Release of records

(a) A licensed athletic trainer shall provide a copy of the athlete's record within 30 days of a written request by the athlete or any person whom the athlete has designated to receive that record, or, if the athlete is a minor, the athlete's legal guardian.

(b) Licensed athletic trainers may require a record request to be in writing and may charge a fee for the reproduction of records, which shall be no greater than \$ 1.00 per page or \$ 100.00 for the entire record, whichever is less. (If the record requested is less than 10 pages, the licensed athletic trainer may charge up to \$ 10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.) If the athlete requests a summary in lieu of the actual record, the charge for the summary shall not exceed the cost that would be charged for the actual record.

(c) If the athlete or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the licensed athletic trainer shall provide a transcription at no cost to the athlete or the person requesting the record.

(d) Where the athlete has requested the release of all or part of a professional treatment record to a specified individual or entity, in order to protect the confidentiality of the records, the licensed athletic trainer shall:

1. Secure and maintain a current written authorization, bearing the signature of the athlete or an authorized representative;
2. Assure that the scope of the release is consistent with the request; and
3. Forward the records to the attention of the specific individual or entity identified and mark the material "Confidential."

(e) A licensed athletic trainer shall not withhold or delay providing a record because the athlete or any other payor failed to pay for services rendered.

13:35-10.11 Advertising and solicitation practices

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

1. "Advertisement" shall mean any attempt directly or indirectly by publication, dissemination or circulation in print or electronic media to induce directly or indirectly any person or entity to purchase or enter into an agreement to purchase services, treatment or goods related thereto from a licensed athletic trainer.
2. "Electronic media" shall include radio, television, telephone, facsimile machine or computer.

3. "Fee schedule" refers to the fees charged for services or goods offered by a licensed athletic trainer.
4. "Graphic representation" shall mean the use of drawings, animations, clinical photographs, dramatizations, music or lyrics.
5. "Print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers or other publications, the content of which is disseminated by means of the printed word.
6. "Routine professional service" refers to a service that a licensed athletic trainer or professional association routinely performs.

(b) Subject to the limitation of (c) and (e) through (i) below, a licensed athletic trainer may provide information to the public by advertising in print or electronic media.

(c) A licensed athletic trainer who engages in the use of advertising that contains any of the following shall be deemed to have engaged in professional misconduct:

1. Any statement, claim or format including a graphic representation that is false, fraudulent, misleading or deceptive;
2. Any misrepresentation of a material fact;
3. The suppression, omission or concealment of any material fact under circumstances that the licensed athletic trainer knows or should have known is improper or prevents an athlete from making a full and informed judgment on the basis of the information set forth in the advertisement;
4. Any claim that the service performed or the materials used are superior to those ordinarily performed or used in the profession;
5. Any promotion of professional service that the licensed athletic trainer knows or should know is beyond the licensed athletic trainer's ability to perform;
6. A technique or communication that appears to intimidate, exert undue pressure or to unduly influence an athlete;
7. Any personal testimonial attesting to the quality or competence of service or treatment by a licensed athletic trainer involving medical or technical assessments that are beyond the athlete's competency to assess, or any testimonial not in compliance with N.J.A.C. 13:35-10.13;
8. The communication of any fact, data or information that may personally identify an athlete without the athlete's signed written permission obtained in advance;
9. An offer to pay, give or accept a fee or other consideration to or from a third party for the referral of an athlete;
10. Any print, language or format that directly or indirectly obscures a material fact; or
11. Any guarantee of results from any procedure.

(d) The Board may require a licensed athletic trainer to substantiate the truthfulness of any assertion or representation set forth in an advertisement.

(e) Any violations of (f) through (i) below shall be deemed professional misconduct.

(f) A licensed athletic trainer shall not engage, either directly or through the use of any agent, employee or representative, in solicitation of an athlete. This subsection shall not prohibit a licensed athletic trainer from offering

services through materials provided to a community service organization that makes known the availability of all professional services listed; nor shall it prohibit the offering of services by a licensed athletic trainer to any bona fide representative of an athlete including, employers, labor union representatives or insurance carriers.

(g) Advertising making reference to or setting forth fees shall be limited to a stated fee for specifically described routine professional services or goods offered by licensed athletic trainers.

1. A licensed athletic trainer who advertises a fee shall disclose all relevant and material variables and considerations that are ordinarily included in such a service, so that the fee will be clearly understood by athletes.

2. In the absence of such disclosure referred to in (g)1 above, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement specifically delineates the additional services contemplated and the fee to be charged.

(h) The time period during which an advertised fee will remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure, the effective period shall be deemed to be 30 days from the date of the advertisement's final publication.

(i) Any licensed athletic trainer advertising a specialty certification shall have been certified by a certifying entity and shall maintain documentary proof of certification from the entity as part of his or her records. A licensed athletic trainer who advertises a specialty certification shall include the full name of the certification and the certifying entity in any advertisements and shall not use initials or acronyms for the certification or certifying entity. For example, a licensed athletic trainer may indicate in advertisements that he or she is a Certified Strength and Conditioning Specialist certified by the National Strength and Conditioning Association but shall not indicate that he or she is a CSCS certified by the NSCA.

[page=117] 13:35-10.12 Advertising free or discounted services; required disclosures

(a) An advertisement offering a fee reduction shall state the reduced fee and the licensed athletic trainer's usual fee for each service for which a reduction is advertised. The usual fee shall be the fee charged for the advertised service for a period of not less than 90 days prior to the publication of the advertised reduction.

(b) If the discount or free service does not apply to all services to be rendered, the advertisement shall specify any associated or reasonably anticipated services that are not included and a statement of the specific charges for all associated or reasonably anticipated services that are not included.

(c) Except for those services specifically excluded in the advertisement offering free services, the licensed athletic trainer shall not charge for any service whatsoever rendered during a period of 72 hours from the time the free service was rendered.

13:35-10.13 Testimonial advertising

(a) All testimonials involving a specific or identifiable procedure shall truthfully reflect the actual experience of the athlete.

(b) The licensed athletic trainer shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct.

(c) Where a licensed athletic trainer directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a clear, legible and readable manner in any advertisement as follows: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL."

13:35-10.14 Minimum content

(a) A licensed athletic trainer shall include the following in all advertisements and professional representations (other than an office entry sign), including advertisements in a classified directory, business cards and professional stationery:

1. The name and license number of at least one licensed athletic trainer working at the advertised practice location; and
2. The street address and telephone number of the practice.

13:35-10.15 Advertising by a business entity offering athletic training

The responsibility for the form and content of any advertisement offering services or goods by a licensed athletic trainer shall be jointly and severally that of each licensed athletic trainer who is a principal, partner, officer or employee of the firm or entity identified in the advertisement.

13:35-10.16 Advertising record retention

(a) A licensed athletic trainer shall retain, for a period of three years from the date of initial publication or dissemination, a copy of every advertisement for his or her services appearing in print media, as well as a video or audio tape of every advertisement communicated by electronic media. A licensed athletic trainer shall indicate on all advertisements in his or her possession the date and place of publication.

(b) Documentation relating to the use of testimonials shall be retained for a period of three years from the date of last use of the testimonial. Documentation shall include the name, address and telephone number of the testimonial giver and the type and amount or value of compensation, if any.

13:35-10.17 Use of professional credentials and certifications

(a) A licensed athletic trainer shall accurately and objectively represent his or her competence, education, training and experience.

(b) A licensed athletic trainer shall use the designation "athletic trainer" or "licensed athletic trainer" or the abbreviation "AT" or "LAT" in conjunction with the use of his or her name and license number. Academic degree designations may be placed after the name and the title.

(c) An advertisement that includes information on professional credentials shall contain the academic degrees attained related to the practice of athletic training and shall refer only to degrees obtained from accredited academic institutions.

Recodify existing 13:35-10.6, 10.7 and 10.8 as 13:35-10.18, 10.19 and 10.20 (No change in text.)