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PUBLIC NOTICES

LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

Notice of Action on Petition for Rulemaking

Corporate and/or Unlicensed Practice of Dentistry

Petitioner: Arthur Meisel, Attorney at Law, on behalf of the New Jersey Dental Association.

Authority: N.J.S.A. 45:1-15.1.

Take notice that on September 26, 2013, the State Board of Dentistry (Board) received a petition for rulemaking from Arthur Meisel, Attorney at Law, on behalf of the New Jersey Dental Association requesting that the Board adopt a rule to establish regulatory guidance with respect to the corporate and/or unlicensed practice of dentistry in this State.

The petitioner raised concerns about the commercial exploitation of the practice of dentistry, including not being subject to the Board's direct control and discipline. The petitioner notes that N.J.S.A. 45:6-12 prohibits the corporate practice of dentistry and that, in accordance with N.J.S.A. 45:6-19, a person who is a manager, proprietor, operator, or conductor of a place where dental operations are performed is considered to be practicing dentistry. In addition, the petitioner states that, except for a person in a closely-allied profession within the meaning of the Professional Services Corporation Act, N.J.S.A. 14:17-1 et seq., only a dentist licensed in New Jersey can have an ownership interest in, or receive profits from, a dental office in this State. In support of its petition, the petitioner references the June 2013 Joint Staff Report on the Corporate Practice of Dentistry in the Medicaid Program issued by the United States Senate Committee on the Judiciary.

The petitioner believes that the Board's rules need to reaffirm and clarify that non-licensees are not permitted to improperly use management companies or other devices to acquire or exercise dominion and control over licensed dentists and/or their dental practices. The petitioner requests the adoption of the below rule:

"Except as otherwise provided by law, every dental practice in New Jersey shall be wholly owned and controlled by one or more dentists duly licensed to practice dentistry in this State. Any contract made by, on behalf of, or for the benefit of a New Jersey dental practice shall provide that the owner or owners of the practice retain the absolute, unconditional right to make all final practice management and other decisions, including but not limited to those relating to compensation, hiring, firing, financing, borrowing, leasing, purchasing, claim submissions, billing, advertising, office policies and procedures, participation in and/or termination of all dental plans including Medicaid, and the establishment of patient fees and modification or waiver thereof."

A notice acknowledging receipt of the petition was filed with the Office of Administrative Law and was published in the New Jersey Register on November 18, 2013, at 45 N.J.R. 2406(b).

At its November 6, 2013, meeting, the Board referred this matter to its Rules and Regulations Committee for further deliberation in order to review the petitioner's request in the context of the Joint Staff Report and the State's statutory and regulatory provisions governing the corporate practice of dentistry, and to develop a better understanding of the implications this request would have for licensees and patients. A notice acknowledging the Board's action on November 6, 2013, was filed with the Office of Administrative Law and was published in the New Jersey Register on December 16, 2013, at 45 N.J.R. 2618(a).

The Board and the petitioner subsequently agreed to five extensions of the period for Board deliberation. Five notices acknowledging these extensions were published in the New Jersey Register on January 6, 2014, at 46 N.J.R. 144(a), on May 5, 2014, at 46 N.J.R. 824(b), on July 7, 2014, at 46 N.J.R. 1655(a), and on December 1, 2014, at 46 N.J.R. 2378(c) and 2379(a).

Take further notice that, on December 3, 2014, the Board and the petitioner agreed to a further extension of the period for Board deliberation on the petition for rulemaking to February 20, 2015, consistent with the requirements of N.J.A.C. 1:30-4.2(b).

A copy of this notice has been mailed to the petitioner pursuant to N.J.A.C. 1:30-4.2.