

VOLUME 46, ISSUE 1
ISSUE DATE: JANUARY 6, 2014
RULE ADOPTIONS

LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Adopted Amendments: N.J.A.C. 13:35-10.6 and 10.7

Practice Outside of Schools and Professional Teams; Scope of Practice

Proposed: April 16, 2012, at 44 N.J.R. 1181(a).

Adopted: November 14, 2012, by the State Board of Medical Examiners, George J. Scott, D.P.M., D.O., President.

Filed: April 15, 2013, as R.2014 d.006, **without change**.

Authority: N.J.S.A. 45:9-37.38.

[page=94] Effective Date: January 6, 2014.

Expiration Date: May 3, 2018.

Summary of Public Comments and Agency Responses:

The official comment period ended June 15, 2012. The Board received 15 comments from the following individuals:

1. David Caplin
2. Kenneth Cieslak
3. Eric Schwartz
4. Anthony Testa
5. Michael Prybicien
6. Richard Garcia, William Paterson University Athletic Training Student
7. Robb S. Rehberg, AT, Ph.D., Government Affairs Coordinator, Athletic Trainers' Society of New Jersey, Inc.

8. Eric Nussbaum, AT, M.S., President, Athletic Trainers' Society of New Jersey, Inc.
9. Lisa Affinito, Executive Director, New Jersey State Board of Physical Therapy Examiners
10. Jessica Spencer Bond, NATA, ATSNJ
11. Gary Shiffman, ATC, Athletic Trainers' Society of New Jersey
12. Jon Heck, Richard Stockton College of NJ
13. Christine Klenk, Richard Stockton College of NJ
14. Brian Mason, PT, DPT, President, American Physical Therapy Association of New Jersey
15. Palangio Gianfranco, NATA, ATSNJ

1. COMMENT: The majority of the commenters support the amendments to N.J.A.C. 13:35-10.6, which permit licensed athletic trainers to provide immediate athletic training services for an injury suffered during an athletic event outside of the interscholastic, intercollegiate, intramural, or professional athletic setting.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: A commenter asks the Board to define "strenuous physical exercise," so as to differentiate activities that are strenuous for 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 definition of "athlete" in N.J.A.C. 13:35-10.2 is not the subject of this rulemaking.

3. 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 definition of "plan of care" in N.J.A.C. 13:35-10.2 is not the subject of this rulemaking.

4. 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" in N.J.A.C. 13:35-10.2 is not the subject of this rulemaking.

5. COMMENT: A commenter recommends that "strenuous physical exercise" or "physical conditioning" be further defined in the definition of "athlete" in N.J.A.C. 13:35-10.2. The commenter contends that a better definition of "athlete" would aid athletic trainers in identifying those who should not receive athletic training services.

RESPONSE: The definition of "athlete" in N.J.A.C. 13:35-10.2 is not the subject of this rulemaking.

6. COMMENT: Two commenters are concerned that the amendments to N.J.A.C. 13:35-10.6 would prevent a licensed athletic trainer from providing follow-up care after basic first aid has been provided to an athlete outside of the interscholastic, intercollegiate, intramural, or professional athletic setting until the athlete has been referred to a physician. The commenters contend that unlicensed individuals can provide first aid and follow-up care without the need for a physician referral. One of the commenters believes that this could deter youth sports camps and club sports from employing licensed athletic trainers. The commenters recommend that the Board amend N.J.A.C. 13:35-10.6(b) upon adoption to state that the regulation does not prohibit a licensed athletic trainer from providing initial or follow-up first aid care.

RESPONSE: First aid care is within the scope of practice of athletic training as set forth in N.J.A.C. 13:35-10.7. As the commenters point out, unlicensed individuals may provide first aid care. Such unlicensed individuals cannot provide athletic training services. The provisions of N.J.A.C. 13:35-10.6 do not apply when licensed athletic trainers provide first aid care and it is not necessary to change the rules as the commenters recommend.

7. COMMENT: A commenter contends that the term "athletic event" is vague and unnecessary as the rule clearly identifies the settings to which it applies, namely those settings that are outside the interscholastic, intercollegiate, intramural, or professional athletic setting. The commenter recommends that N.J.A.C. 13:35-10.6(b) be amended so that the phrase: "a licensed athletic trainer who is providing athletic training services during an athletic event outside of an interscholastic, intercollegiate, intramural or professional athletic setting" is changed to "a licensed athletic trainer who is providing athletic training services to an athlete outside of an interscholastic, intercollegiate, intramural or professional athletic setting."

RESPONSE: The Board proposed amendments to N.J.A.C. 13:35-10.6 in response to comments it received when that rule was first proposed. Those comments contended that N.J.A.C. 13:35-10.6 prohibit a licensed athletic trainer from providing the immediate response to an injury suffered during an athletic event outside of the interscholastic, intercollegiate, intramural, or professional athletic setting. The Board believed that a licensed athletic trainer should be

permitted to provide this immediate response and proposed to amend N.J.A.C. 13:35-10.6 to permit licensed athletic trainers to provide such limited athletic training services in this one particular situation. The Board still believes that outside the interscholastic, intercollegiate, intramural, or professional athletic setting there is no expectation that an athlete is generally healthy as there is no physical examination requirements before an athlete can engage in athletic activities. Given this, it is necessary to ensure that an athlete is seen by a physician prior to the provision of athletic training services outside of the interscholastic, intercollegiate, intramural, or professional athletic setting in order to protect the health, safety, and welfare of athletes. The Board does not agree that inserting the phrase "to athletes" is necessary as athletic training may only be provided to athletes.

8. COMMENT: Several commenters are concerned that the amendments to N.J.A.C. 13:35-10.6 will impose barriers to practice for licensed athletic trainers. They see no reason to require both physician supervision and physician referrals. One of the commenters believes the amendments require competitors to refer patients to each other as a physician would have little interest in referring a patient to a licensed athletic trainer who is supervised by a different physician. Another commenter is concerned that the amendments will have a negative impact on sports camps where athletes may be from far away. The commenter contends that, if a licensed athletic trainer identifies a biomechanical issue, he or she should be able to address this issue with stretching and strengthening without having to refer an athlete to a physician.

RESPONSE: The Board points out that there is a difference between physician supervision of a licensed athletic trainer and a referral by a physician to a licensed athletic trainer. Physician supervision focuses on the education and experience of the licensed athletic trainer. A physician referral focuses on the status of an athlete and the need for athletic training services that has been determined by the physician after an examination of the athlete. The Board does not share the commenter's concern that physicians will not refer athletes to licensed athletic trainers [page=95] with whom the physician does not have a plan of care. The requirements of N.J.A.C. 13:35-10.6 were adopted to protect the health, safety, and welfare of athletes as required by N.J.S.A. 45:1-15.1 and the Board does not believe that the rule imposes an undue barrier to the practice of athletic training.

9. COMMENT: One commenter points out that licensed athletic trainers are required to have a plan of care with a supervising physician. The commenter contends that licensed athletic trainers should be permitted to make the decision as to which injuries and athletes need to be referred to a physician.

RESPONSE: The Board notes that a plan of care is not specific to an athlete and does not address the health of an athlete and the appropriateness of athletic training services for that athlete.

10. COMMENT: Two commenters oppose provisions in the adopted amendments to N.J.A.C. 13:35-10.6 that require a licensed athletic trainer to refer every injury to a physician when he or she provides immediate athletic training services for an injury suffered during an athletic event outside of the interscholastic, intercollegiate, intramural, or professional athletic setting. One of the commenters contends that this is not required in the interscholastic, intercollegiate,

intramural, or professional athletic setting and that is not necessary outside of these settings because every licensed athletic trainer is required to have a plan of care with a physician that outlines when referrals are required. Another commenter is concerned that this provision will undermine confidence in athletic trainers and add unnecessary costs to healthcare.

RESPONSE: A referral to a physician is not required in the interscholastic, intercollegiate, intramural, or professional athletic training setting because in such settings there is an expectation that an athlete is generally healthy due to physical examination requirements before an athlete can engage in athletic activities. There is no such confidence outside of these settings. N.J.S.A. 45:9-37.37 establishes a two-tiered scope of practice for licensed athletic trainers that differentiates between practice in the interscholastic, intercollegiate, intramural, or professional athletic setting and practice outside of those settings. N.J.S.A. 45:9-37.37(c) also establishes when an athletic trainer shall refer an athlete to another health care professional. The Board does not believe that N.J.A.C. 13:35-10.6 undermines confidence in licensed athletic trainers or that it will add costs to healthcare. The rule ensures that athletes receive the appropriate medical services when they are injured during athletic events.

11. COMMENT: A commenter recommends that N.J.A.C. 13:35-10.6 be amended so that a licensed athletic trainer could not provide services to an athlete after an event has ended until a physician has referred the athlete for further services.

RESPONSE: As written, N.J.A.C. 13:35-10.6(b) prohibits a licensed athletic trainer from providing athletic training services after an athletic event unless a physician has referred an athlete for athletic training services.

12. COMMENT: One commenter asks if a licensed athletic trainer is permitted to evaluate and treat an injury in a private setting outside of an athletic event without a referral from a physician.

RESPONSE: When a licensed athletic trainer is working outside of the interscholastic, intercollegiate, intramural, or professional setting, he or she is not permitted to provide athletic training services outside of an athletic event without a referral from a physician.

13. COMMENT: One commenter asks why the adopted amendments prohibit a licensed athletic trainer from allowing an athlete who suffered a minor injury to return to play. The commenter contends that licensed athletic trainers routinely make return to play decisions.

RESPONSE: N.J.A.C. 13:35-10.6 does not prohibit a licensed athletic training from allowing an athlete to return to play. The rule requires a licensed athletic trainer to refer an athlete to a physician after providing athletic training services for an injury suffered during an athletic event outside of the interscholastic, intercollegiate, intramural, or professional athletic setting. The rule also prohibits a licensed athletic trainer from providing additional athletic training services to such an athlete until a physician refers the athlete for athletic training services. The rule does not address an athlete returning to play.

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 adoption follows:

SUBCHAPTER 10. ATHLETIC TRAINERS

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

(a) Except as provided in (b) below, 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) A licensed athletic trainer who is providing athletic training services during an athletic event outside of an interscholastic, intercollegiate, intramural, or professional athletic setting may evaluate an injury suffered by an athlete during that event and provide immediate athletic training services for that injury. After the initial response to the injury, the licensed athletic trainer shall refer the athlete to a physician for a physical examination. The licensed athletic trainer shall not provide any further athletic training services to such an athlete until a physician has referred the athlete for further athletic training services.

(c) (No change in text.)

13:35-10.7 Scope of practice

(a) A licensed athletic trainer in an interscholastic, intercollegiate, intramural or professional athletic setting, in a setting where he or she is providing evaluation and immediate athletic training services for an injury suffered outside of the interscholastic, intercollegiate, intramural or professional athletic setting pursuant to N.J.A.C. 13:35-10.6(b) or in any other setting pursuant to a referral from a physician, may provide to an athlete:

1. Evaluation of injuries;

Recodify existing 1.-3. as 2.-4. (No change in text.)

(b) Notwithstanding (a) above, a licensed athletic trainer may provide bandaging, wrapping, taping, padding, bracing, and splinting procedures to uninjured parts of an athlete's body in any setting without a referral from a physician.

Recodify existing (b)-(e) as (c)-(f) (No change in text.)