

PUBLIC NOTICES  
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LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
State Board Of Medical Examiners

**N.J.A.C. 13:35-2B.10, 6.10 and 6.16**

**Notice of Final Action on Petition for Rulemaking**

**Supervision of Physician Assistants; Advertising and Solicitation Practices;  
Professional Practice Structure**

Petitioner: Alexander Doctoroff, D.O., on behalf of the Dermatological Society of New Jersey.

**Take notice** that on March 23, 2010, Alexander Doctoroff, D.O., on behalf of the Dermatological Society of New Jersey, requested that the State Board of Medical Examiners (the Board) amend its regulations set forth at N.J.A.C. 13:35-2B.10, 6.10 and 6.16. A notice acknowledging receipt of the petition and summarizing its contents was filed with the Office of Administrative Law and was published in the New Jersey Register on May 3, 2010 at 42 N.J.R. 859(b).

**Take further notice** that the Board considered the petition for rulemaking at its Board meeting on May 12, 2010, at which time the Board entertained public comment on the petition. Following the public comment and subsequent Board discussion, the Board determined that further review and analysis of the issues raised by the petitioner were warranted in order to determine whether the requested amendments to N.J.A.C. 13:35-2B.10, 6.10 and 6.16 are necessary and reasonable. Consistent with the requirements of N.J.A.C. 1:30-4.2, the Board referred [page=2151] this matter to its Executive Committee and to its Physician Assistant Advisory Committee, for further deliberation. A notice of action on petition for rulemaking was filed with the Office of Administrative Law and was published in the New Jersey Register on June 21, 2010 at 42 N.J.R. 1255(d).

**Take further notice** that following review of the petition by the Board's Executive Committee and Physician Assistant Advisory Committee, including the review of numerous comments submitted both in support and in opposition to the petition, as well as review of the commenters' supporting documentation, the Board voted on August 11, 2010 to deny the petition for the reasons set forth below.

The Board denies the petitioner's request to amend N.J.A.C. 13:35-2B.10 to provide that only board-certified or board-eligible dermatologists may supervise physician assistants providing dermatological services, and disagrees with the petitioner's suggestion that non-dermatologists should be precluded from providing dermatological care. In New Jersey, physicians are granted a plenary license to practice medicine and surgery. As a result, nothing in the Board's enabling statute or the regulations in N.J.A.C. 13:35 would preclude a licensed physician who is not board-certified or board-eligible in dermatology from providing dermatological services. The Board notes that physicians in myriad practice specialties assess and treat dermatological conditions within their particular scopes of practice. The Board notes also that the Physician Assistant Licensing Act, N.J.S.A. 45:9-27.10, does not limit supervision of physician assistants to those physicians that are board-certified or board-eligible. Rather, a physician is required to supervise a physician assistant consistent with the physician's particular scope of practice. The Board's regulations expressly limit a physician assistant's scope of practice to those duties that are encompassed within his or her supervising physician's scope of practice. See N.J.A.C. 13:35-2B.1, defining "supervising physician" as a plenary licensed physician in good standing who engages in direct supervision of physician assistants "whose duties shall be encompassed by the supervising physician's scope of practice." The Board believes that the physician assistants supervised by the plenary

licensed physicians practicing in these and other specialty areas are adequately trained to provide dermatological services to patients.

The Board notes that the petitioner's suggested amendment would preclude physician assistants working in practice areas as diverse as primary care, family care, pediatrics, emergency medicine, internal medicine, infectious disease, and obstetrics and gynecology, from assessing and treating dermatological complaints. The Board believes that the suggested amendment would significantly increase physician workload in these and other affected practice settings and would make it exceedingly difficult for patients to receive timely care for dermatological conditions. In addition, the Board notes that petitioner has failed to articulate a sufficiently compelling reason to justify subjecting the practice of dermatology to more onerous regulation than other areas of practice.

Because the Board believes that the petitioner's requested amendment is inconsistent with the practice of medicine by plenary licensed physicians in this State, and is also inconsistent with the express provisions of the Physician Assistants Licensing Act, the Board declines to amend N.J.A.C. 13:35-2B.10.

The Board also denies the petitioner's request to amend the professional advertising and solicitation practices regulation set forth in N.J.A.C. 13:35-6.10. A portion of the petitioner's suggested amendment is general in nature, and would prohibit physicians from holding themselves out as board-certified specialists in a particular specialty unless a physician has received formal recognition in that specialty by the specialty boards articulated in the rule or otherwise approved by the Board. The Board believes that this amendment is unnecessary as it reiterates the prohibition currently contained in the rule in subsection (m). N.J.A.C. 13:35-6.10(m) currently prohibits a licensee from advertising that he or she is board certified in a specialty unless he or she possesses current certification by a specialty board or certifying entity recognized or approved by the Board.

The remainder of petitioner's requested amendment is specific to dermatology practice and would prohibit anyone from holding himself or herself out as a dermatologist unless he or she has completed a three-year formal dermatology residency after his or her first year of internship, which is accredited by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA), and unless he or she possesses current specialty certification from the ABMS or the AOA. Because, as noted above, petitioner has failed to articulate a compelling reason to single out the practice of dermatology for stricter regulation than other areas of practice, and because the Board believes that the advertising and solicitation requirements currently contained in N.J.A.C. 13:35-6.10 adequately ensure that licensees do not misrepresenting the nature of their practices, the Board declines to amend N.J.A.C. 13:35-6.10.

The Board also denies petitioner's request to amend N.J.A.C. 13:35-6.16 to provide that only board-certified or board-eligible dermatologists may supervise physician extenders, including physician assistants, and to limit the number of offices at which a dermatologist may supervise physician-extenders, including physician assistants. The Board declines to amend the rule to provide that only board-certified or board-eligible dermatologists may supervise physician assistants because, as noted above, the Board believes that petitioner's request is inconsistent with the statutory requirements in New Jersey by which physicians are granted a plenary license to practice medicine and surgery, and is also inconsistent with the provisions of the Physician Assistant Licensing Act. Moreover, as noted above, the Board believes that the petitioner's request would significantly curtail physician assistant practice in New Jersey, potentially limiting patient access to care.

The Board also denies petitioner's request to amend N.J.A.C. 13:35-6.16 to limit the number of offices at which dermatologists may supervise physician assistants to a total of four offices. Although the petitioner suggests that the amendment is necessary to ensure that physicians spend an appropriate amount of time at each office where physician assistants practice, the Board disagrees and believes that existing regulations adequately address the issue of physician assistant supervision. N.J.A.C. 13:35-2B.10 imposes stringent supervising requirements on physician assistant practice. Specifically, the rule provides that, in an outpatient setting, a physician assistant's supervising physician must be constantly available through electronic communications for consultation or recall. In addition, the supervising physician is required to regularly review the physician assistant's practice, and must personally review all charts and patient records, and countersign all medical orders within seven days of the physician assistant's entry of the order in the patient record. When a physician assistant enters a medical order for the prescription or administration of

medication, the supervising physician must review and countersign the order within 48 hours of the entry. In addition, the Board notes that N.J.A.C. 13:35-2B.10 limits the number of physician assistants that a physician may supervise. Currently, the rule provides that in all practice settings, other than private practices that are not hospital based or institutionally affiliated, a physician may supervise no more than four physician assistants at any one time. In private practice settings that are not hospital based or institutionally affiliated, a physician may supervise two physician assistants, although the Board notes that it will be proposing, in consultation with the Physician Assistant Advisory Committee, an amendment to this requirement in the near future. The proposed amendment would limit the number of physician assistants that a physician may supervise, irrespective of practice setting, to four. The Board believes that the requirements in N.J.A.C. 13:35-2B.10 help to ensure that physician assistants are adequately supervised, thereby ensuring the health, safety and welfare of the patients they treat. The Board, therefore, declines to amend N.J.A.C. 13:35-6.16.

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