

VOLUME 49, ISSUE 19
ISSUE DATE: **OCTOBER 2, 2017**
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Adopted Amendments: N.J.A.C. 13:35-6A.2, 6A.3, 6A.4, and 6A.7

Definitions; Standards for Declaration of Brain Death; Pronouncement of Death

Proposed: January 3, 2017, at 49 N.J.R. 50(a).

Adopted: April 5, 2017, by the State Board of Medical Examiners, George Scott, D.P.M., D.O., President.

Filed: August 31, 2017, as R.2017 d.181, **without change**.

Authority: N.J.S.A. 45:9-2 and P.L. 2013, c. 185.

Effective Date: October 2, 2017.

Expiration Date: May 3, 2018.

Summary of Public Comments and Agency Responses:

The official comment period ended March 4, 2017. The Board received two comments from the following individuals:

1. Michael J. Solomon, MD
2. Anthony L. D'Ambrosio, MD, FAANS, President, New Jersey Neurosurgical Society

1. COMMENT: A commenter supports the amendments to the New Jersey Declaration of Death Act but is concerned that these amendments do not address provisions in the act that allow a family member to require a hospital to maintain a body for religious reasons. The commenter believes that this provision requires doctors and hospitals to continue treatment after brain death has been determined. The commenter recommends that the act be amended to require that a patient's religious beliefs be established through clear and convincing evidence before continued treatments are required under this provision.

RESPONSE: The suggestion made by the commenter could only be effected by an amendment of N.J.S.A. 26:6A-5, which in turn would require legislative action. The Board does not have any authority to amend its rules in the manner suggested by the commenter, and takes no position on the commenter's suggestion.

2. COMMENT: A commenter supports the amendments to N.J.A.C. 13:35-6A.2, 6A.3, 6A.4, and 6A.7 and basing a declaration of death on the exercise of a physician's best medical

judgment. The commenter also supports allowing pediatric critical care specialists to declare death in those under the age of two months.

RESPONSE: The Board thanks the commenter for his support.

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 6A. DECLARATIONS OF DEATH UPON THE BASIS OF NEUROLOGICAL CRITERIA

13:35-6A.2 Definitions

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

. . .

13:35-6A.3 Requirements for physicians authorized to declare death on the basis of neurological criteria

(a) A physician performing a clinical brain death examination shall be plenary licensed and shall hold the following qualifications, dependent on the age of the patient upon whom a declaration of brain death is to be made:

1. Age below two months: When declarations of brain death are to be made upon children below two months of age, the examining physician shall be a specialist in neonatology, pediatric neurology, pediatric critical care medicine, or pediatric neurosurgery.

2.-3. (No change.)

[page=3361] 13:35-6A.4 Standards for declaration of brain death

Declarations of brain death shall be made by a physician, meeting the requirements set forth in N.J.A.C. 13:35-6A.3, based upon the exercise of the physician's best medical judgment and in accordance with currently accepted medical standards that are based upon nationally recognized sources of practice guidelines, including, without limitation, guidelines adopted by the American Academy of Neurology.

13:35-6A.7 Pronouncement of death

The examining physician shall document the determination of brain death in the patient record and shall sign the chart. The actual pronouncement of death may thereafter be made by the examining physician or any plenary licensed physician acting upon the authorization of the examining physician.