

(a)

NEW JERSEY RACING COMMISSION
Notice of Action on Petition for Rulemaking
Off-Track and Account Wagering

N.J.A.C. 13:74

Petitioner: Lewis Stein.

Take notice that on February 23, 2017, the New Jersey Racing Commission received a petition for rulemaking from the above petitioner requesting that the Commission adopt a new rule permitting New Jersey residents to place wagers with the New Jersey Account Wagering system while a resident is temporarily outside the State of New Jersey.

In accordance with N.J.A.C. 1:30-4.2 and N.J.A.C. 13:1D-1.3, the Executive Director subsequently mailed to the petitioner and filed with the Office of Administrative Law a notice of action on the petition.

Take notice that on April 21, 2017, the Commission took action with regard to the above-described petition and determined to refer the matter for further deliberations, which shall be concluded within 90 days of the referral so that the matter may be placed before the Commission for consideration at a public meeting. A notice of this rulemaking action will be filed with the Office of Administrative Law.

(b)

DIVISION OF CONSUMER AFFAIRS
Notice of Action on Petition for Rulemaking
State Board of Dentistry

N.J.A.C. 13:30-6.1

Petitioner: Frank R. Recker, DDS, JD, Frank R. Recker & Associates Co., L.P.A., on behalf of the American Board of Dental Specialties.

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

Take notice that on March 2, 2017, the State Board of Dentistry (Board) received a petition for rulemaking from Frank R. Recker, DDS, JD, Frank R. Recker & Associates Co., L.P.A., on behalf of the American Board of Dental Specialties (ABDS), requesting that the Board amend existing N.J.A.C. 13:30-6.1 to formally recognize the ABDS-recognized certifying boards/areas of practice as specialties, and any future ABDS-recognized specialties; thereby allowing diplomates of ABDS-recognized certifying boards to advertise as specialists in accordance with N.J.A.C. 13:30-6.1 and 6.2.

The petitioner notes that the ABDS was formed to offer a specialty-recognition process, similar to the American Board of Medical Specialties, that is not controlled by a private professional/trade association, such as the American Dental Association (ADA). ABDS' focus is on recognizing certifying boards as specialty boards. To be recognized by the ABDS, a certifying board seeking dental specialty recognition must require a minimum of two full-time, formal, advanced educational programs that are a minimum of two years in duration and are presented by recognized educational institutions; or require 400 didactic hours in the specific area and the equivalent of one year of clinical practice. A certifying board that is seeking membership in the ABDS must: 1) reflect a distinct and well-defined area of expertise in dental practice; 2) develop a rigorous standard of preparation and evaluation in the dental specialty area; 3) provide evidence of psychometric evaluation of the written and oral examination; 4) provide an effective mechanism to maintain certification; and 5) exist as an independent, self-governing entity whose main purpose is to evaluate candidates for Board certification. The documentation and application requirements are numerous, and the ABDS maintains rigorous standards for recognition.

The petitioner states that N.J.A.C. 13:30-6.1 violates the rights of credentialed members of ABDS certifying boards by infringing on their

First Amendment rights to free speech by banning truthful non-misleading commercial speech, and on their Fourteenth Amendment rights to equal protection and due process of law. The petitioner also states that N.J.A.C. 13:30-6.1 violates anti-trust law by suppressing competition in a recognizable market.

The petitioner states that the New Jersey regulation has effectively granted the ADA the power to regulate the right to free speech of ABDS credentialed members by not allowing credentialed members in the ABDS certifying boards to advertise as specialists even though they are highly qualified to do so. The specialty regulation has a chilling effect on the lawful exercise of the right to engage in truthful, non-misleading commercial speech because, if these licensees were to advertise to the public as specialists, their licenses would be at risk and subject to monetary and licensure penalties imposed by the Board.

The petitioner also states that members of its certifying boards have protected property and liberty interests in their licenses to practice dentistry and to be rewarded for their industry, including reaping the rewards of earning a *bona fide* specialty credential in their respective areas of expertise. In addition, the petitioner states that its licensees are deprived of any neutral, State-sponsored mechanism to determine dental specialties, evaluate the credentials earned in areas of dentistry that are not recognized by the ADA as a specialty, and appeal the ADA's denial of recognition of any credentialing organization that issues *bona fide* credentials upon which credentialed members of the ABDS could declare themselves "specialists" in their respective fields.

The petitioner further states that the Board has delegated authority to the ADA to determine which areas of dental practice should receive specialty designation and, hence, which areas may be advertised by New Jersey dentists as specialties. In addition, the petitioner states that the regulations provide no mechanism for evaluating the accrediting organization or its credentials or for contesting the decisions of the ADA denying specialty recognition. The petitioner also states that the Board has no active, continuing, or meaningful supervision over the unfettered regulatory delegation afforded to the ADA to determine which areas of practice and which dental specialties may be advertised by New Jersey dentists as specialties. The petitioner states that Federal constitutional restraints do not allow the Board to delegate unguided and uncontrolled authority to a private organization to establish rules determining the lawfulness or unlawfulness of commercial speech.

In addition, the petitioner notes that the ADA recently revised its Code of Ethics to allow dentists to advertise a specialty not specifically recognized by the ADA.

The petitioner proposes that N.J.A.C. 13:30-6.1 be amended to read as follows (additions in bold):

(a)-(b) (No change.)

(c) The following special areas of dentistry may be announced as specialty dental practices:

1.-9. (No change.)

10. Oral implantology/implant dentistry;

11. Oral medicine;

12. Orofacial pain;

13. Dental anesthetics; and

14. Any other area of dentistry recognized in the future by the American Dental Association and/or American Board of Dental Specialties as a specialty area of dentistry.

(d) The Board shall grant permission to announce a dental specialty or specialization of a dental practice to:

1. A licensed dentist who is certified or eligible for certification by a specialty board recognized by the American Dental Association or American Board of Dental Specialties appropriate to that area of dental practice listed in (c) above; or

2. A licensed dentist who successfully completes a post-doctoral education of two or more years in duration in one or more of the specialty areas listed in (c) above and which, at the time of completion, was accredited or provisionally accredited by the American Dental Association Council on Dental Education and/or have comported with the relevant educational requirements of the American Board of Dental Specialties.

(e)-(g) (No change.)

In addition, the petitioner urges the Board to provide a process that allows a dentist who does not qualify to advertise as a specialist pursuant to N.J.A.C. 13:30-6.1, as petitioned for amendment. The petitioner suggests that the Board provide a process for a non-qualifying dentist to advertise other areas of specialty, for example, upon a showing that the diplomate credentials are issued by: a bona fide, independent certifying board, based upon psychometric testing; a certifying board which is comprised of and operated by licensed dentists, and that only issues its diplomate certificates to licensed dentists; a board that has staff for its operations and has been issuing such diplomates for more than five years. The petitioner believes that such a provision would allow access to other licensees to potentially seek recognition of a specialty.

Take further notice that, at its April 5, 2017, meeting, the Board referred this matter to its Rules and Regulations Committee for further deliberation in order to develop a better understanding of the implications this request would have for licensees and the public, and to allow the Board time to consider the comments to its pre-proposal concerning the Board's advertising rules. The notice of pre-proposal was published in the New Jersey Register on April 3, 2017, at 49 N.J.R. 631(a).

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

(a)

DIVISION OF STATE POLICE

Notice of Anticipated Funding

U.S. Department of Transportation, Hazardous Materials Emergency Preparedness (HMEP) Grant

Take notice that the Division of State Police (DSP) announces the anticipated availability of the following grant program funds:

I. **Name of Program:** U.S. Department of Transportation, Hazardous Materials Emergency Preparedness (HMEP) Grant Program.

II. **Program Background and Purpose:** Under 49 U.S.C. § 5116, the United States Department of Transportation/Pipeline and Hazardous Materials Safety Administration provides grant funding for the HMEP program. The New Jersey State Police Emergency Management Section (NJSP/EMS), Hazardous Materials Response Unit (HMRU) is the HMEP Program Grant Coordinator for hazardous materials emergency planning and training related activities. The HMEP Program is governed by the regulations at 49 CFR Part 110 and 2 CFR Part 200.

On December 4, 2015, The Fixing America's Surface Transportation (FAST) Act was signed into law (Public Law No. 114-94). The FAST Act reauthorized the HMEP Grant Program through Fiscal Year (FY) 2020 and combined the planning and training grants. Therefore, beginning in FY 2016, HMEP applicants are no longer required to separately apply and account for planning and training funds. Under 49 U.S.C. § 5116, HMEP Grants are available to:

a. Develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), including ascertaining flow patterns of hazardous material on lands under the jurisdiction of a state or Native American tribe, and between lands under the jurisdiction of a state or tribe and lands of another state or tribe.

b. Train public sector employees to respond to accidents and incidents involving hazardous material incidents. To the extent that a grant is used to train emergency responders, the applicant must ensure that the emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations.

Applicants are encouraged to budget funding towards developing or revising emergency plans and training activities to address the bulk transportation of energy products by rail and over the road. Applicants are also encouraged to conduct commodity flow studies to determine the frequency and quantity of HAZMAT shipments being transported through local communities, and train emergency responders to respond

appropriately to incidents involving bulk shipments of energy projects as well as other HAZMAT.

Funding will be made on a reimbursement basis only and is contingent upon receipt of a Federal HMEP continuation award from the Pipeline and Hazardous Materials Safety Administration to the NJSP/EMS.

III. **Anticipated Available Funding and Subaward Period:** If available, \$191,000 in funding will be utilized to support this program. Funds will be awarded on a competitive basis. The anticipated funding period for each subaward is September 30, 2017 to September 30, 2018.

Applicants should be aware that the NJSP/EMS has not yet submitted a continuation application to the Pipeline and Hazardous Materials Safety Administration for this HMEP Grant. NJSP/EMS will complete and submit the application when it becomes available from the Pipeline and Hazardous Materials Safety Administration.

IV. **Eligibility and Application Requirements:** The subaward program is open only to the 21 county and 566 Local Emergency Planning Committees (LEPCs) in New Jersey. Guidelines and Application Kits will be provided upon request. Applicants must submit a complete application that includes: application forms, required certifications, program narrative, budget, and budget narrative, an identification of project staff, a description of how the project will be evaluated, and an application authorization. LEPCs must have a State approved Emergency Operations Plan (EOP).

V. **Selection Criteria:** For subaward consideration, applications will be initially reviewed to ensure the proposals meet the minimum standards. Proposals meeting the minimum standards will be substantively reviewed based on the following criteria:

a. **Problem Statement/Needs Assessment/Adaptability — 20 percent:** Clearly state the problem/need that will be addressed with grant funds. Include statistics and factual information to substantiate the need and selection of the proposed program. Describe the impact of the problem on the community and any steps that have been taken to address the problem. Identify gaps in services and additional resources that are needed to resolve the problem.

b. **Goals, Objectives, Action Strategy — 25 percent:** State the goal(s) of the program. List clear and measurable objectives to achieve the goal, describing specific approaches that will be taken to resolve the problem and expected outcomes. Fully describe the implementation process. Include the following points in the action strategy: major activities that will be implemented; personnel and resources needed for program; and time frame for project implementation.

c. **Planning, Management Structure and Background — 20 percent:** Provide information regarding the implementation process for your project. Outline the management structure; identify the Project Director and other key individuals who will be directly involved in the operation of the project.

d. **Performance Measures/Evaluation — 20 percent:** Describe the methods that will be used to measure the progress and assess the impact of the project.

e. **Program Budget — 15 percent:** Using the budget form, list funds requested for program implementation. Provide a detailed narrative for use of Federal funds requested in each budget category and/or line item.

All data and accomplishments derived from this subaward program will be made available to the New Jersey Office of Emergency Management (NJOEM) for distribution to any LEPC interested in acquiring or utilizing them. Therefore, projects that involve work that will benefit numerous LEPCs will rate highest for consideration.

Projects that solely involve the purchase of equipment are prohibited. This is a planning/training subaward program and, as such, equipment that would be used for planning/training or response is contrary to the intent of this program. While it is possible that minor equipment purchases may be necessary to effectively carry out an intended project, this type of expenditure should be kept to a minimum, must be approved by HMRU, and may directly affect an applicant's rating of eligibility.

VI. **Notification of Award:** Applicants will be notified approximately 45 days after the application deadline whether their application is approved. Awards are solely contingent upon the availability of Federal funds. NJSP/EMS reserves the right to decline any and all applications for funding and to award grants in amounts