

52 N.J.R. 815(a)

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Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > **BOARD OF MEDICAL EXAMINERS**

Administrative Code Citation

N.J.A.C. 13:35-6.16

Text

Notice of Final Action on Petition for Rulemaking

Petitioner: Abraham Sharaby.

Authority: N.J.S.A. 45:9-2.

Take notice that on December 30, 2019, the Board of Medical Examiners (Board) received a petition for rulemaking from Abraham Sharaby requesting that the Board amend N.J.A.C. 13:35-6.16, so that policies required by that rule indicate whether a physician has participated in the Medical Aid in Dying for the Terminally Ill Act, P.L. 2019, c. 59 (Act). The petitioner also requests that the Board provide this information as part of the website profile the Division maintains for each licensed physician.

The petitioner contends that a physician's choice to provide services under the Act is important information that a patient should be aware of prior to relying on such a physician to provide health care services

to the patient. The petitioner is concerned that a physician he selects to provide health care services may at a future date recommend that he end his life if his health status becomes precarious.

The Board reviewed the petitioner's request at its January 8, 2020 meeting. The Board will not amend N.J.A.C. 13:35-6.16 as the petitioner requests. The Board is concerned that the petitioner's request is based on a misconception as to the provisions in the Act. Nothing in the Act suggests that a physician would recommend that a patient end his or her life. Rather, the Act requires a patient to request medical aid in dying directly from a physician, who would be free to decide if he or she will or will not facilitate that request. The Board is also concerned that the petitioner has a misconception that once a physician has provided healthcare services under the Act, he or she would necessarily provide such healthcare services in the future. Under the Act, a physician would make a choice as to the appropriateness of providing such healthcare services on a case-by-case basis and a physician who provides healthcare services pursuant to the Act for one patient may determine that such services were not appropriate for another patient.

The Board does not believe that a physician's decision as to whether he or she will provide services under the Act is relevant to the medical policies required by the rule. As these policies address general medical practices and do not address specific healthcare services that a physician provides, there is no reason to impose a requirement that medical policies address when a physician decides to provide healthcare services pursuant to the Act. The Board is concerned that such a requirement could be seen as discouraging physicians from providing healthcare services pursuant to the Act. Such a requirement could also pose a risk to the privacy of patients who seek health care services under the Act.

The Board points out that the information provided as part of a physician's website profile is established by N.J.S.A. 45:9-22.23. Given this statutory authority, the Board cannot provide additional information on the profile as the petitioner requests.

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

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