

45 N.J.R. 73(b)

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**PUBLIC NOTICES**

**LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF POLYSOMNOGRAPHY**

**N.J.A.C. 13:44L-2.1, 2.2, 2.3, 2.4, 2.5, 3.2, 3.3, 3.4, and 4.1**

**Notice of Receipt and Action on Petition for Rulemaking**

**Certification in Basic Life Support**

Petitioner: Ralph M. Shenefelt, Vice President, Strategic Compliance, on behalf of the Health and Safety Institute.

**Take notice** that on November 28, 2012, the State Board of Polysomnography (the Board) received a petition for rulemaking from Ralph M. Shenefelt, Vice President, Strategic Compliance, on behalf of the Health and Safety Institute (HSI), requesting that the Board amend its regulations set forth at N.J.A.C. 13:44L-2.1, 2.2, 2.3, 2.4, 2.5, 3.2, 3.3, 3.4, and 4.1.

The petitioner requests that the Board amend the above-referenced rules to permit a current certificate in Basic Life Support (BLS) issued by the American Safety and Health Institute (ASHI) to satisfy the Board's requirements for current certification in Basic Life Support for the Healthcare Provider in connection with licensure, renewal, and continuing education of polysomnographic technologists, technicians, and trainees. Current N.J.A.C. 13:44L-2.1(a)5, 2.2(a)3 and (b)4, 2.3(a)3 and (b)4, 2.4(a)4, 2.5(b)3 and (d)4, 3.2(e)2 and (i)1, 3.3(c)2, 3.4(f)1, and 4.1(b) all require that an applicant for licensure or licensure renewal provide proof to the Board that the applicant holds current certification in Basic Life Support for the Healthcare Provider from the American Heart Association or Cardio Pulmonary Resuscitation/Automated External Defibrillator (CPR/AED) for the Professional Rescuer from the American Red Cross.

The petitioner believes that the current regulations restrain competition and violate principles of fairness by not permitting ASHI programs to satisfy the requirements for training in basic life support. The petitioner notes that under N.J.S.A. 45:14G-10, the Board is required to establish educational standards for licensure at least commensurate with the standards of the national Association of Polysomnographic Technologists or of the American Academy of Sleep Medicine (AASM). He represents that AASM recognizes the ASHI BLS training program CPR PRO for the Professional Rescuer as a sound and substantially

equivalent program to that offered by the American Heart Association and the American Red Cross.

The petitioner feels that the Board's current regulations have an adverse impact on small business. He notes that there are 138 ASHI Training Centers in the State, many of which are small businesses employing or independently contracting with nearly 639 ASHI authorized instructors. He believes that granting an exclusive market for BLS training to the American Heart Association and the American Red Cross is an impediment to these training businesses, discourages the expansion of existing or new ASHI Training Centers in the State, and causes a loss of jobs.

The petitioner further states that the current regulations have an adverse impact on licensees who present valid ASHI BLS certifications through direct penalties, including denial, suspension, or revocation of license, or by indirect penalties, such as the need to expend time and cost for additional, and in his view unnecessary, American Heart Association or American Red Cross training. Additionally, he feels that the current rules deny licensees a greater choice in BLS training program price, selection, and service.

The petitioner also points out that like the American Heart Association, HSI is a nationally accredited organization of the Continuing [page=74] Education Coordinating Board for Emergency Medical Services (CECBEMS). CECBEMS is the national accrediting body for Emergency Medical Services (EMS) continuing education courses and course providers. The petitioner represents that the ASHI BLS program is CECBEMS approved.

The petitioner also states that ASHI programs have been found equivalent to American Heart Association programs in New Jersey, having been so recognized in 2001 and 2007 by the Department of Health, and in 2003 and 2011 by the State Board of Dentistry. He states that ASHI resuscitation training programs conform to the International Liaison Committee on Resuscitation (ILCOR) 2010 Consensus on Science and the 2010 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care Science.

The petitioner states that neither the American Heart Association nor the American Red Cross is a Recognized Accrediting Organization, nor are they recognized regulatory standards developing organizations. He notes that the American Heart Association has previously established that it does not review or sanction the CPR training programs or materials of other organizations; rather, it directs such approval to appropriate regulatory authorities.

The petitioner also characterizes the American Heart Association and the American Red Cross as profit-making, non-tax paying entities that are the dominant competitors in the resuscitation business. Thus, their approved training centers and licensed training providers have a vested economic interest in BLS training, especially where required for occupational licensing. The petitioner believes that the business units of HSI are similar to those of the American Heart Association and the American Red Cross: each organization develops and markets commercially available, proprietary training programs, products, and services to

training centers and licensed training providers, either directly or via distributors; the business structures of the training centers and licensed training providers includes sole proprietorships, partnerships, corporations, LLCs, and non-profits; and instructors affiliated with training centers and licensed training providers are authorized to certify course participants. Certification of health care providers in all of the organizations requires successful completion of a written exam and performance and evaluation of hands-on skills to verify provider skill competency.

The petitioner concludes by stating that the current regulations by the Board promote unfair and discriminatory practices that prevent or substantially lessen fair and honest competition without a legitimate State purpose or countervailing rationale sufficient to justify its harmful effects. He believes that if the regulations were amended to accept the ASHI BLS program, there would be no appreciable loss of consumer protection.

**Take further notice** that the Board considered the petition for rulemaking at the open public session of the Board meeting on December 11, 2012, at which time 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. 13:44L-2.1, 2.2, 2.3, 2.4, 2.5, 3.2, 3.3, 3.4, and 4.1 are necessary and reasonable. The Board is requesting that the petitioner appear before the Board to provide additional information and to answer the Board's questions regarding the petition. A copy of this notice has been mailed to the petitioner consistent with the requirements of N.J.A.C. 1:30-4.2.