

# PROPOSED DRAFT 1/9/08 TO BE PURSUED AS AN EMERGENCY RULE

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

STATE BOARD OF MEDICAL EXAMINERS

Medical Office Definition

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 13:35-6.17(b)

Emergency Amendment Adopted and Concurrent Proposed Amendment Authorized : January 9, 2008 by Mario Criscito, President State Board of Medical Examiners

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)):

Authority: N.J.S.A. 45:9-2 and 22.4 et. seq, specifically N.J.S.A. 45:9-22.9

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal No. PRN 2008 -

Effective Date:

Expiration Date:

Submit written comments by \_\_\_\_\_, 2008 to:

William V. Roeder  
Executive Director  
State Board of Medical Examiners  
P.O. Box 183  
Trenton, New Jersey 08625-0183

This amendment is adopted on an emergency basis and will become effective upon acceptance for filing with the Office of Administrative Law (see N.J.S.A. 52:14B-

4(c), as implemented by N.J.A.C. 1:30-6.5(b)). Concurrently, the provisions of this emergency adoption are proposed for adoption pursuant to the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 1:30-6.5(d)), if filed on or prior to the emergency expiration date. The agency emergency adoption and concurrent proposal follows:

#### SUMMARIES TO BE DRAFTED

The agency proposal follows:

Full text of the proposal follows:

#### 13:35-6.17 Professional fees and investments, prohibition of kickbacks

(a) (No change.)

(b) A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest, unless the practitioner held the interest prior to July 31, 1991 and discloses that interest to the patient as required herein or as otherwise permitted in this rule. Such a practitioner shall be deemed to be grandfathered. If a licensee professionally affiliated with a grandfathered practitioner obtains a significant beneficial interest in the same health care service in which the grandfathered practitioner holds an interest on or after July 31, 1991, that practitioner shall not refer patients to that service. A licensee professionally affiliated with a grandfathered practitioner who does not hold an interest in that health care service may refer patients to that service so long as all of the disclosure requirements set forth below are met. Disclosure shall be made by the practitioner in ways appropriate to the

professional circumstances including conspicuous posting of a written disclosure form prepared as set forth below, at least 8½ by 11 inches in size, in the practitioner's waiting room in all office locations. The patient shall also be provided with a personal copy of the notice. The notice format shall be as follows:

Public law/rule of the State of New Jersey/Board of Medical Examiners mandates that a physician, podiatrist and all other licensees of the Board of Medical Examiners inform patients of any significant financial interest held in a health care service.

Accordingly, take notice that practitioners in this office do have a financial interest in the following health care service(s) to which patients are referred:

(LIST APPLICABLE HEALTH CARE SERVICES)

You may, of course, seek treatment at a health care service provider of your own choice. A listing of alternative health care service providers can be found in the classified section of your telephone directory under the appropriate heading.

1. - 3. (No change.)

[4. The restrictions on referral of patients established in this subsection shall not apply to:

i. A health care service that is provided at the practitioner's medical office for which the patient is billed directly by and in the practitioner's name; or.

ii. Radiation therapy pursuant to an oncological protocol, or lithotripsy or renal dialysis treatment, provided that there is disclosure of the financial interest.]

(c) The restrictions on referral of patients established in (b) above shall not apply to:

1. Radiation therapy pursuant to an oncological protocol, or lithotripsy or renal dialysis treatment, provided that there is disclosure of the financial interest; or

2. A health care service that is provided at the practitioner's medical office for which the patient is billed directly by and in the practitioner's name. For purposes of this paragraph, a practice site at which ambulatory surgery and/or special surgical procedures that are integrally related to a practitioner's field of practice are performed may be deemed a referring practitioner's "medical office" if :

(i) The practice site is operated in a business form authorized under N.J.A.C. 13:35-6.16 (f) for the practice of medicine;

(ii) Referring practitioners participate in governance so as to ensure that the referring practitioner can fulfill obligations as set forth in N.J.A.C. 13:35-6.16 , with respect to the hiring and retention of professional staff, the quality of care provided and the maintenance of all professional practice standards;

(iii) The referring practitioner personally performs the procedure on the patient he or she referred;

(iv) Disclosure of the referring practitioner's financial interest is made to the patient in writing, at or prior to the time that the referral is made, consistent with the notice format to be utilized by grandfathered practitioners in (b) above, documented in the referring practitioner's chart, and accompanied by a list of the full names of all other practitioners who have an interest in the practice site and, if applicable, disclosure that certain component parts of the bill for this service may be handled by payors differently (for example, the professional fee may be in-network and the facility or technical fee may be out-of-network);

(v) All of the ownership interests in the practice site are held by investors who are referring practitioners, referring practitioners in combination with other non-referring practitioners, closely allied licensed health care professionals or a licensed hospital;

(vi) Ownership interests are not related to previous or expected volume of referrals, services furnished, or the amount of business otherwise generated by or anticipated from that investor to the entity, and the amount of payment returned to an investor is directly proportional to the amount of the capital investment (including the fair market value of any services rendered prior to the operational date of the entity) by that investor, unrelated to the volume of business generated;

Under this rule, a practitioner's practice site shall be deemed the practitioner's "medical office" and the billing "in the practitioner's name" if the practitioner can demonstrate compliance with all of the requirements of this rule. The requirements of subsection (v) shall be deemed to have been met if the practitioner and other investors can document that within 120 days of filing of the rule they have commenced to bring the practice site into compliance with the requirements of subsection (v).

(c) through (k) Recodified as (d) through ((l) (No change in text.)