

WILENTZ, GOLDMAN & SPITZER P.A.

NEW JERSEY REGULATORY UPDATE

April/May 2004

In order to continue providing our healthcare clients with timely information impacting upon their practices, we are pleased to present the firm's April/May 2004 New Jersey Regulatory Update. This update is provided as a brief summary of regulatory changes published in the New Jersey Register during April 2004. This update is provided for informational purposes only and the reader is urged to review the entire text of the changes in the New Jersey Register. Further, this summary represents only selected changes that may affect our healthcare clients who are licensed professionals. As such, please be aware that there are many other regulatory changes that may affect our healthcare clients, such as licensed healthcare facilities, that are not addressed in this summary.

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ALL BOARD OF MEDICAL EXAMINERS LICENSEES – Patient's Right to Chaperone.

On April 5, 2004, the State Board of Medical Examiners published adopted new rule N.J.A.C. 13:35-6.23 and adopted amendment to the Appendix to N.J.A.C. 13:35-6.3 that requires all licensees of the Board in all office settings, to provide notice to a patient or any other person who is to be examined, the right to have a chaperone present during the following (i) breast and pelvic examinations of females; and (ii) genitalia and rectal examinations of both males and females. Such notice must be provided, either in writing to the patient, or by conspicuously posting a notice in a manner in which patients or any other person who is to be examined are made aware of the right to request a chaperone and to decline care if a chaperone acceptable to the patient is not available. The new rule also requires that in such circumstances, in which the posting or the provision to the patient of the written notice would not convey the right to have a chaperone present, the Board licensee must use other means to ensure that the patient to be examined understands the right to have a chaperone present.

CHIROPRACTORS – New regulations regarding the delegable tasks or functions of unlicensed assistants and the ordering of elective therapy devices.

On April 5, 2004, the State Board of Chiropractic Examiners published new rule N.J.A.C. 13:44E-2.7A and adopted an amendment to N.J.A.C. 13:44E-2.7. There are several important aspects of this new rule summarized below. First, the Board adopted an amendment to N.J.A.C. 13:44E-2.7 that prohibits a chiropractor from permitting an unlicensed assistant to administer certain electro-therapy devices powered by an alternating current or any interferential devices as defined in the regulations.

Second, the Board's new rule at N.J.A.C. 13:44E-2.7A permits a chiropractor to order a battery operated electro-therapy device for home use provided that the patient: (1) is not using a cardiac pacemaker; (2) is not epileptic; (3) does not suffer from any cognitive impairment which affects the patient's ability to follow instructions; (4) is willing and able to assume responsibility in writing for use of the electric

therapy device; (5) will have adequate home assistance where such assistance may be necessary in the opinion of the treating chiropractor, especially when the electrodes are to be placed paraspinally; (6) is provided with a complete set of instructions for home use; and (7) has provided a written acknowledgment that a complete set of instructions for home use has been received.

Third, the new rule prohibits a licensee from ordering an electro-therapy device for home use which: (1) uses AC electrical current; or (2) is an interferential device which crosses two medium frequency alternating currents through the body.

Fourth, the new rule does provide that a battery operated electro-therapy device may be ordered for home use by the chiropractor, provided that the chiropractor has instructed the patient that the electro-therapy device should not be applied over areas specified in the rule. Finally, the new rule sets forth specific documentation requirements that must be satisfied by the chiropractor.

PSYCHOLOGISTS – State Board of Psychological Examiners readopts licensure regulations with amendments.

On April 5, 2004, the State Board of Psychological Examiners published the readoption of its licensure regulations at N.J.A.C. 13:42 with amendments. All psychologists are strongly encouraged to review the published new rules as the specific changes to the rules are beyond the scope of this update.

AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGIST – Proposed amendment to rules to clarify requirements for the provision of record to patients.

On April 5, 2004, the Audiology and Speech-Language Pathology Advisory Committee published proposed amendments to N.J.A.C. 13:44C-8.1 to clarify the requirements for the provision of records to patients by audiologists and speech-language pathologists. This proposed amendment would clarify when a licensee is permitted to charge for the reproduction of patient records and would more closely reflect the record production requirements imposed by other licensing boards. Written consents to the proposed amendment must be submitted by June 4, 2004, to Renee Clark, Executive Director, Audiology and Speech-Language Pathology Advisory Committee, Division of Consumer Affairs, 124 Halsey Street, P.O. Box 45002, Newark, NJ 07101.

PERFUSIONISTS – Proposed rules for licensure standards for perfusionists.

On April 5, 2004, the State Board of Medical Examiners published proposed new rules N.J.A.C. 13:35-13 to implement “The Perfusionist Licensing Act,” N.J.A.C. 13:9-37.94, et seq. that became effective June 24, 1992. The proposed rules would implement the Act and govern the licenses of perfusionists in New Jersey. Written comments to the proposed rules must be submitted by June 4, 2004.

MARRIAGE AND FAMILY THERAPISTS- State Board of Marriage and Family Examiners readopt licensure rules with amendments.

On April 19, 2004, the State Board of Marriage and Family Examiners readopted its licensure rules with amendments. All licensees of the Board are strongly encouraged to review the revised rules as the specific changes to the rules are beyond the scope of this update.

The information provided in this summary is for discussion purposes only and shall not be considered legal advice or legal opinion on any specific facts or circumstances. The contents of this summary and any related information and/or materials are intended solely for general information purposes only. You are urged to consult your own attorney concerning your own situation and any specific legal questions that you may have. You may also to contact John Murdoch of the law firm of Wilentz, Goldman & Spitzer, P.A. at (732) 855-6008 or via e-mail at jmurdoch@wilentz.com.