

42 N.J.R. 1213(b)

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RULE ADOPTIONS

LAW AND PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS

42 N.J.R. 1213(b)

Adopted Amendments: [N.J.A.C. 13:35-2A.2](#), [2A.5](#) and [2A.6](#)

Certified Midwives: Definitions; Independent Practice; Affiliated Physicians; Clinical Guidelines

Proposed: June 1, 2009 at [41 N.J.R. 2203\(a\)](#).

Adopted: September 9, 2009 by the State Board of Medical Examiners, Paul Mendelowitz, M.D., President.

Filed: May 21, 2010 as R.2010 d.110, **without change**.

Authority: [N.J.S.A. 45:9-2](#) and [45:10-22](#).

Effective Date: June 21, 2010.

Expiration Date: Pursuant to Executive Order No. 1 (2010), the expiration date of [N.J.A.C. 13:35](#) is extended from March 17, 2010, until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq.

Summary of Public Comments and Agency Responses:

The official comment period ended July 31, 2009. The Board received 15 comments from the following individual:

1. Gary Brickner, Brickner-Mantell Center for Women's Health
2. Pamela Rosser, ACNM
3. Stephanie Mejia, ACNM

4. Jennifer Klein, MS-IV, UMDNJ-SOM
5. Irene Siegel
6. Barbara Coyle
7. Jasmine Surti
8. Paula Focazio
9. Linda Perry, CM, NARM, MANA, ACNM, NYSALM
10. Leah Marinelli, ACNM
11. Dawn Durain, CNM, MPH, FACNM, American College of Nurse-Midwives
12. Romyana Kudeva
13. Megan Findley
14. Rachel Glass
15. Joanna M. King, Esq., Director, Government Relations, American College of Nurse-Midwives

1. COMMENT: Most of the commenters support the amendments to [N.J.A.C. 13:35-2A.2](#), [2A.5](#) and [2A.6](#). The commenters contend that removing the requirement for physician signature on clinical guidelines acknowledges that midwifery is an independent practice and maintains channels for consultation and referrals. The amendments permit midwives to enter into collegial agreements without physicians incurring vicarious liability for the midwives' actions. Midwives have a record of providing high quality, safe care to women and these amendments will assist them in continuing to deliver excellent care. The commenters point out that the American College of Nurse Midwives (ACNM) opposes requirements for signed collaborative agreements between physicians and midwives. The commenters believe that the amendments will encourage physicians to enter into affiliations.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: One commenter recommends that the Board insert a hyphen between "nurse" and "midwife" as the trademarked and copyrighted term is "nurse-midwife."

RESPONSE: The Board points out that the term "nurse midwife" is used in [N.J.S.A. 45:10-1](#) et seq. without a hyphen. The Board will continue to use the term as it appears in the statute.

3. COMMENT: One commenter contends that the Board decided to amend [N.J.A.C. 13:35-2A.2](#), [2A.5](#) and [2A.6](#) based upon the ACNM position on independent midwifery practice. The commenter contends [page=1214] that all of the ACNM's position should be followed, not just some of that position. The commenter also contends that ACNM supports independent practice only for those midwives who hold a master's degree. The commenter believes that any midwife who holds a master's degree should be permitted to practice without a written and signed clinical guideline. The commenter contends that any midwife with a bachelor's degree should be provided time to obtain a master's degree. Any midwife who has an

associate's degree or who has less than five years of experience should be required to maintain written clinical guidelines. The commenter believes that all midwives should obtain master's degrees.

RESPONSE: The Board points out that the ACNM supports independent practice for all licensees, not just those with master's degrees, as the commenter contends. In New Jersey, all licensees may engage in independent practice. The Board also points out that the amendments to [N.J.A.C. 13:35-2A.2](#) and [2A.6](#) do not remove the requirement that licensees have written clinical guidelines, nor do the amendments remove the requirement that a midwife enter into an affiliation with a New Jersey licensed physician. The amendments remove the requirements that these clinical guidelines be signed by affiliated physicians and be filed with the Board. The Board does not believe that it need require that all licensees hold master's degrees. Requiring that applicants for licensure complete an accredited midwifery education program ensures that they are adequately prepared for the independent practice of midwifery.

4. COMMENT: [N.J.A.C. 13:35-2A.5](#) refers to the ACNM Standards for Practice of Nurse Midwifery. A commenter believes the Board intended to refer to Standards for the Practice of Midwifery.

RESPONSE: The Board will amend [N.J.A.C. 13:35-2A.5](#) in a future rulemaking to change the title of this document.

5. COMMENT: A commenter contends that New Jersey has the worst cesarean section rate in the nation and that removing restrictions on midwifery practice will help to address this. The commenter contends that midwives offer a better chance of avoiding unwanted surgeries and interventions. The commenter believes that, if insurance companies are making it harder for obstetricians to partner with midwives, it is good to remove this onerous burden.

RESPONSE: The Board cannot respond to the commenter's unsupported contention that the amendments to [N.J.A.C. 13:35-2A.2](#), [2A.5](#) and [2A.6](#) will affect the cesarean section rate in New Jersey. The Board points out that it is not removing the requirement that licensees maintain written clinical guidelines with affiliated physicians. The adopted amendments only remove requirements that these guidelines be signed by an affiliated physician and be filed with the Board.

6. COMMENT: One commenter believes that certified professional midwives (CPMs) should be recognized as independent and paid in the same way as obstetricians and certified nurse midwives (CNMs).

RESPONSE: In New Jersey, all licensees may engage in independent practice. The Board has no authority over payment structure for licensees.

7. COMMENT: One commenter contends that there is a gap in knowledge and professionalism between CPMs and CNM/CMs. The commenter contends that only CNMs and CMs who have passed the ACNM examination and who have malpractice insurance should be allowed to practice without physician signed practice protocols.

RESPONSE: In New Jersey, all licensees have independent practice and the Board does not believe that it should impose the differing practice standard suggested by the commenter.

8. COMMENT: One commenter contends that all midwives should be required to have a

minimum of a bachelor's degree.

RESPONSE: The Board does not believe that it need require that all licensees hold bachelor's degrees. Requiring that applicants for licensure complete an accredited midwifery education program ensures that they are adequately prepared for the independent practice of midwifery.

Federal Standards Statement

A Federal standards statement is not required because there are no Federal standards or requirements applicable to the requirements of the adopted amendments.

Full text of the adoption follows:

SUBCHAPTER 2A. LIMITED LICENSES: MIDWIFERY

13:35-2A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

...

"Clinical guidelines" means a document, which sets forth patterns of care and which provides for consultation, collaboration, management and referral as indicated by the health status of a woman receiving care from a licensee.

...

13:35-2A.5 Independent practice

(a) (No change.)

(b) Certified nurse midwives and certified midwives shall conduct their practice pursuant to standards set forth by the ACNM in Standards for the Practice of Nurse Midwifery (1993), as amended and supplemented, available from the American College of Nurse-Midwives, 8403 Colesville Rd., Suite 1550, Silver Spring, MD 20910, which is incorporated herein by reference as part of this rule.

(c)-(d) (No change.)

13:35-2A.6 Affiliated physicians; clinical guidelines

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

(c) The clinical guidelines shall set forth:

1.-2. (No change.)

3. Procedures to follow if one of the risk factors from [N.J.A.C. 13:35-2A.9](#) and [2A.11](#) is encountered;

4.-8. (No change.)

(d) A licensee shall provide clinical guidelines and the identity of his or her affiliated physician(s) to the Board upon request.

Recodify existing (f)-(g) as (e)-(f) (No change in text.)