

**NEW JERSEY ADMINISTRATIVE CODE, 13:35-11, ET SEQ.
ALTERNATIVE RESOLUTION PROGRAM**

13:35-11.1 Definitions

As used in this subchapter the following words and terms have the following meanings, unless the context indicates otherwise:

“Alternative Resolution Program” or “ARP” means a program established pursuant to this subchapter for those subject to Board jurisdiction who are suffering from chemical dependencies and other impairments which shall permit such licensees to disclose their status to an entity which would allow for confidential oversight.

“Board” means the New Jersey State Board of Medical Examiners.

“Chemical dependency” means a condition involving the continued misuse of chemical substances.

“Chemical substances” is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber’s direction, as well as those used illegally.

“Confidential” means that a participating licensee’s identity (as well as any information from which a licensee’s identity could be deduced) shall be maintained in a limited access file maintained by the Impairment Review Committee (“IRC”), with disclosure provided only to those persons whom the IRC determines have a need to know, in order to perform their role in the review process.

“Impairment” means an inability to function at an acceptable level of competency, or an incapacity to continue to practice with the requisite skill, safety and judgment, as a result of alcohol and/or chemical dependency, a psychiatric and/or emotional disorder, senility or a disabling physical disorder.

“Impairment Review Committee” or “IRC” means the subcommittee of the Board created pursuant to this subchapter.

“Licensee” means a physician (including a resident or intern), podiatrist, bioanalytical laboratory director, certified nurse midwife, physician assistant or other professional subject to regulation by the Board.

“Panel” means the Medical Practitioner Review Panel.

“Professional assistance program” or “PAP” means a publicly or privately organized entity offering services to facilitate the rehabilitation of licensees suffering from chemical

dependencies or other impairments. A program may limit its services to specific categories of licensees.

13:35-11.2 Creation of Impairment Review Committee

The Board shall establish a committee to review matters involving practitioners suffering from chemical dependencies or other impairments. This committee shall be comprised of five members to include: two members of either the Board or the Panel, to be appointed by the Board President; two individuals representing Approved professional assistance programs which provide services to at least one third of the ARP participants; and one individual designated by the Commissioner of Health, who is acceptable to both the Board President and the individuals representing approved professional assistance programs. This committee shall be known as the Impairment Review Committee (“IRC”) and shall meet on a regular basis. The Medical Director of the Board and the Executive Director of the Board shall serve as staff to the IRC and shall be available to assist the IRC at its meetings. With regard to independent referrals (not made by an approved professional assistance program), the Executive Director shall provide the IRC with all of the information, including the identity of the licensee about whom the referral has been made, which was provided with the referral, along with any information concerning concurrent investigations or consumer complaints relating to the licensee. With respect to those referrals made by approved professional assistance programs, the Executive Director shall advise the IRC of any information concerning concurrent investigations or consumer complaints, without disclosing the identity of the licensee, so that the IRC will be in a position to assess whether participation in the program is appropriate.

13:35-11.3 Duties of an approved professional assistance program

(a) An approved professional assistance program shall:

1. Promptly conduct appropriate inquiry with regard to every referral received to determine whether the information indicating licensee impairment is sufficiently reliable to warrant further review;
2. Make an initial report to the IRC concerning every referral which suggests that a licensee has a chemical dependency or any other impairment within 30 days of receipt of a referral. That report shall indicate the licensee’s code number and sufficient information concerning the suspected impairment and the nature of the practice for the IRC to conduct a meaningful review. The report shall address: the nature of the impairment; whether the licensee rendered or was expected to render patient care while impaired; whether patients were harmed either directly or indirectly by the licensee’s conduct; whether the licensee has engaged in an activity which could render that licensee subject to criminal penalty including, but not limited to, the illegal distribution of controlled dangerous substances or sexual abuse of patients; and whether the licensee

previously has undergone a rehabilitation program, and, if so, when that occurred, the nature and the duration of the prior treatment and the results thereof. The initial report shall also include recommendation to the IRC concerning a proposed plan of treatment; the services which will be provided by the sponsoring program; practice restrictions which should be imposed, if any; the monitoring regimen to be instituted, if any; the supervision and reporting to be required and by whom and the frequency of its periodic reports to the IRC. Alternatively, the PAP may recommend no further action be taken when, after inquiry, it is determined that there is insufficient information upon which to conclude that the licensee is suffering from a chemical dependency or any other impairment;

3. Conduct such supplemental inquiry as may be directed by the IRC and may request of the IRC that further investigation be conducted by staff, investigative personnel or the Attorney General, if appropriate;

4. Prepare a letter agreement, including a plan for recovery relating to each referral, setting forth the participant's obligations and memorializing his or her consent to the release of all pertinent medical, psychiatric or personnel records to the IRC should such documents become necessary as part of its review, as well as the licensee's consent to provide the notice to the IRC of all events as set forth in (a)7 below and notice to comparable PAPs or licensing boards as set forth in (a)8 below;

5. Secure from each participant his or her signature on both the summary report and a letter agreement, maintain the original of both in a secure place and provide a coded copy, without identifying information, to the IRC;

6. Immediately report to the IRC and disclose the identity of the participating licensee if that licensee:

i. Has not complied with the terms of the letter agreement or the plan as set forth in the summary report;

ii. Has been the subject of a urine or blood test report which is positive for the presence of a substance not appropriately prescribed for a legitimate documented reason;

iii. Has otherwise demonstrated a relapse or impairment;

iv. Has engaged in deceptive behavior (including, but not limited to, an attempt to invalidate a drug screen, substitute a specimen, present a fraudulent attendance record);

v. Has suffered an exacerbation of a condition rendering the licensee incapable of practicing with requisite skill and safety; or

vi. Has had a change of status (including, but not limited to, the initiation of a disciplinary proceeding at a health care facility, an arrest or a disappearance);

7. Provide notice of program participation to comparable professional assistance programs in other jurisdictions if the licensee should elect to leave this State or should apply for initial licensure in another state, if such programs exist. If the jurisdiction to which the licensee is planning to move does not have a professional assistance program which has an arrangement with the licensing board in that jurisdiction, the PAP shall provide notice directly to the licensing board. A copy of such notice shall be provided to the IRC; and

8. Prepare periodic reports as to the progress of all of the participants which it is sponsoring, pursuant to a schedule as established by the IRC, and, as appropriate, coordinate the submission of any other documentation directed.

13:35-11.4 Duties of the Impairment Review Committee

(a) The IRC shall perform the following duties, as well as such others as the Board may require. The IRC:

1. Shall accept from licensees, and from other members of the public, reports (with the individual's identity) concerning licensees who may be suffering from chemical dependencies or other impairments;
2. Shall accept referrals (with the individual's identity) from the Board;
3. Shall accept coded initial reports from approved professional assistance programs (without any information from which the individual's identity can be discerned);
4. May request additional information from staff, the sponsoring PAP, the participant or persons with knowledge concerning a participant's condition or progress in rehabilitation;
5. Shall promptly review each referral to determine if participation in the ARP is appropriate. In making this determination, the IRC shall give consideration to the following factors:
 - i. The nature of the impairment;
 - ii. Whether the licensee rendered or attempted to render or was expected to render care at a time when impaired;
 - iii. Whether patients were harmed either directly or indirectly by the licensee's conduct;

iv. Whether the licensee has engaged in an activity which could render the licensee subject to criminal penalty, including, but not limited to, the illegal distribution of controlled dangerous substances or sexual abuse of patients;

v. Whether the licensee previously has undergone a rehabilitation program, and, if so, when that occurred, the nature and the duration of the prior treatment and the results thereof; and

vi. Whether such factors in a particular case would make participation in the Alternative Resolution Program inconsistent with the public interest;

6. With respect to PAP referrals, shall transmit to the Board a coded summary report (without the disclosure of any information from which the individual's identity could be discerned) as prepared by the IRC either upon completion of its review or within 30 days, whichever occurs first;

7. With respect to referrals from the Board, the public or other practitioners, shall prepare the summary report, reflecting the factors set forth at (a)5 above to be transmitted to the Board. If the IRC review has been initiated by a self-referral or by a report by another practitioner, reports to the Board shall be coded (without the disclosure of any information from which the individual's identity could be discerned). If the IRC has concluded that, based upon its review, there is insufficient information upon which to conclude that the licensee is suffering from a chemical dependency or other impairment, it shall so state in its confidential summary report, indicating the extent of its review. If the IRC has determined that participation should be permitted, the summary report shall address the following, as appropriate:

i. What treatment is warranted;

ii. What services will be provided by the sponsoring program;

iii. What practice restrictions should be imposed, if any;

iv. What monitoring regimen should be instituted, if any;

v. What supervision and reporting should be required and by whom; and

vi. At what frequency periodic interviews with the IRC should be scheduled;

8. Shall conduct such supplemental inquiry as may be directed by the Board;

9. Shall review coded letter agreements between the PAP and participating licensees embodying the terms of participation as reviewed by the Board and mandating that certain notice shall be provided to other jurisdictions if the licensee should elect to leave

this State or should apply for initial licensure in another state, or in response to a particular inquiry from another state or regulatory agency or a health care facility at which the participating licensee has applied for privileges;

10. Shall notify the Board of any rejection by the licensee of a term of participation, including a refusal to consent to the release of records, and if no new agreement can be reached, shall notify the licensee that he or she may not participate in the program and shall disclose the licensee's identity and transmit the entire IRC file to the Board for appropriate disciplinary review;

11. Shall promptly review all reports submitted pursuant to such letter agreements, requesting supplemental investigation or appearances, as appropriate;

12. Shall immediately review any report indicating that a participating licensee has not complied with the terms of the letter agreement or has otherwise demonstrated a relapse or impairment, and shall thereafter provide the Board with notice of any information, which appears to be reliable and for which no acceptable explanation has been proffered, concerning noncompliance;

13. Shall provide the Board with periodic coded reports, submitted in accordance with a schedule established by the IRC, as to the status of all participating licensees and any recommendations for modification of the terms of agreement;

14. Shall, throughout the duration of the term of the agreement, maintain the agreement and information relating to the licensee as a matter under investigation relating to possible licensee misconduct and thus shall, except as provided herein, afford confidentiality pursuant to N.J.S.A. 45:9-19.3, except that nothing herein shall preclude the Board, the IRC or the Attorney General from conducting appropriate investigation of the relevant facts, securing opinions from consultants and complying with judicial directives; and

15. Shall, upon a licensee's successful completion of the terms as provided by the letter agreement, advise the Board that it deems the matter to be closed without a finding of cause for action, except that nothing herein shall preclude the Board or the Panel from reviewing and relying upon all relevant materials should it receive a subsequent referral regarding the licensee.

13:35-11.5 Professional assistance program: approval and discontinuance

(a) A professional assistance program seeking to sponsor participants in the ARP first shall seek approval from the Board. A PAP applying for approval shall be required to enter into a formal agreement with the Board, attesting to its willingness and ability to provide necessary services to participants and to work with the IRC in the discharge of its responsibilities. Upon request, any

PAP seeking approval shall provide the Board with sufficient information concerning its staffing, the services it provides, available treatment referrals and monitoring contracts so that the Board can be assured that the program is in a position to discharge its obligations under the agreement. Each program shall designate a plenary licensed physician who shall serve as program director and who shall be responsible to assure that the program fulfills its obligations under the agreement. By that agreement the Board shall grant its approval and delineate the conditions upon which the approval could be rescinded

(b) Should an approved professional assistance program cease offering services, the Board shall allow participating licensees a period of 30 days to seek the sponsorship of another approved professional assistance program provided that interim monitoring provisions are proposed and acceptable to the Board.

13:35-11.6 Colleague referrals

The Board authorizes the IRC and approved professional assistance programs to accept reports from practitioners pursuant to N.J.S.A. 45:9-19.5 and any practitioner who files such a report directly with the IRC, an approved PAP or with any of the report recipients otherwise authorized by law shall be deemed to have discharged the obligation imposed by statute. Although the PAP need not disclose to the IRC, the Panel or the Board the identity of colleagues who file such report, it shall maintain that information on file and shall make it available to the Board in the event that an inquiry is initiated as to whether the reporting colleague discharged his or her obligation pursuant to N.J.S.A. 45:9-19.5. If the reporting practitioner elects to file a report directly with the IRC, the Panel or the Board, he or she may utilize that licensee's code number in the report. These reports shall be retained confidentially if the licensee agrees to the terms of participation in the program.