

DEPARTMENT OF LAW AND PUBLIC SAFETY

STATE ATHLETIC CONTROL BOARD

Communicable Bodily Fluid Virus Testing

Proposed Amendments: N.J.A.C. 13:46-12A.2, 12A.3, 12A.5, and 12A.6

Authorized By: State Athletic Control Board, Board Members Steven Katz and Dennis McDonough, Larry Hazzard, Sr., Commissioner.

Authority: N.J.S.A. 5:2A-4, 7 and 8(b).

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

Proposal Number: PRN 2004-340

Submit written comments by November 6, 2004 to:

Nicholas Lembo, Counsel
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P.O. Box 180
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The agency proposal follows:

Summary

_____The State Athletic Control Board proposes amendments to N.J.A.C. 13:46-12A concerning the current testing requirements for communicable bodily fluid viruses. More specifically, the proposed amendments would change the current testing requirements for Hepatitis B and C, and HIV.

Under the proposed amendments, Hepatitis B and C and HIV testing would still be

required. The proposed amendments would, however, expand the testing time frame from 14 to 180 days prior to scheduled competition. The proposed amendments would eliminate the requirement to submit negative test results for Hepatitis B and C and HIV solely for licensing purposes. Lastly, the proposed amendments would require that contestants complete a new medical form which would be known as a “Communicable Bodily Fluid Virus High-Risk Questionnaire.”

The Board proposes to amend N.J.A.C. 13:46-12A.2(b), which sets forth pre-licensure medical examination requirements to delete the requirement that HIV tests shall be conducted no earlier than 14 days prior to licensure and to require that Hepatitis B and C and HIV tests shall be conducted no earlier than 180 days prior to participation in each scheduled competition.

The Board proposes to amend N.J.A.C. 13:46-12A.3, which defines a thorough medical examination, to delete the current requirement that HIV testing be conducted no earlier than 14 days prior to licensure and to add a requirement that Hepatitis B and C and HIV testing be conducted no earlier than 180 days prior to participation in each scheduled event. The Board proposes to add a new requirement that a thorough medical examination includes completion of a Communicable Bodily Fluid Virus High-Risk Questionnaire no earlier than 180 days prior to participation in each scheduled event. The questionnaire would be reviewed by a Board appointed ringside physician or the Board’s Medical Advisory Council Chairman. The questionnaire will be on a form provided by the Board. Multiple copies of the form will be supplied to the promoter upon the promoter’s request to obtain a show permit. The questionnaire will also be available upon request to the Board. The questionnaire will involve questions with

regard to behaviors, practices or settings that likely increase one's possible risk of contracting a communicable bodily fluid virus. Upon review of the completed form, the Medical Advisory Council Chairman or ringside physician could recommend to the Commissioner that additional testing be ordered pursuant to N.J.A.C. 13:46-12A.2(c) prior to certifying the contestant's fitness to engage in a contest pursuant to N.J.A.C. 13:46-12A.2(d) and 12A.4(c). The ultimate goal of the Board is to protect the health and safety of the contestants, those associated with a regulated event, as well as the public attending a regulated event.

The Board proposes to amend N.J.A.C. 13:46-12A.5, which details HIV testing requirements, to delete the requirement that the initial test for HIV detection shall be conducted no earlier than 14 days prior to licensure and to amend the current requirement that HIV testing be conducted no earlier than 14 days prior to participation in each scheduled competition to require that the HIV test be conducted no earlier than 180 days prior to participation in each scheduled competition. The testing solely for licensure purposes would be eliminated. The Board also proposes to amend N.J.A.C. 13:46-12A.5 to include the requirement of submission of a completed Communicable Bodily Fluid Virus High-Risk Questionnaire no earlier than 180 days prior to participation in each scheduled competition.

The Board proposes to amend N.J.A.C. 13:46-12A.6, which details Hepatitis B and C testing requirements, to delete the requirement that the initial test for Hepatitis B and C detection shall be conducted no earlier than 14 days prior to licensure and to amend the requirement that HIV testing be conducted no earlier than 14 days prior to participation in each scheduled competition to require that the Hepatitis B and C test be conducted no earlier than 180 days prior

to participation in each scheduled competition. The testing solely for licensure purposes would be eliminated. The Board also proposes to amend N.J.A.C. 13:46-12A .6 to include the requirement of submission of a completed Communicable Bodily Fluid Virus High-Risk Questionnaire no earlier than 180 days prior to participation in each scheduled competition.

These proposed amendments would affect all professional boxers, mixed martial artists, kick boxers and extreme wrestlers. Referees and judges, who are also subject to medical testing, would also be affected by the proposed amendments. Medical requirements for boxers and kick boxers are directly addressed in Subchapter 12A. Extreme wrestlers are subject to the requirements of Subchapter 12A as referenced in Subchapter 20. Mixed martial artists are subject to the same medical requirements as stated in Subchapter 24B.

The proposed amendments have been reviewed and approved by the Athletic Control Board's chief ringside physician and the Chairman of the Athletic Control Board's Medical Advisory Council. The recommendations have also been reviewed and approved by the New Jersey Department of Health and Senior Services' State Epidemiologist and Senior Assistant Commissioner.

The proposed amendments would exceed the communicable bodily fluid virus testing standards recommended by the Association of Boxing Commissions at their annual convention held in St. Louis in July 2003. The proposed amendments would also exceed guidelines established by the American Association of Professional Ringside Physicians. These associations recommend testing within 180 days of licensure but do not require testing within

180 days of each scheduled competition. In addition, these associations do not require the completion of a high-risk questionnaire. The State Athletic Control Board has reviewed its proposed amendments with the above organizations as well as other medical experts and has received their unanimous approval. Even with the passage of the proposed amendments, New Jersey would continue to have very strict communicable bodily fluid virus testing requirements when compared to all other state athletic commissions.

It is the opinion of the medical experts who caused the proposed amendments to be brought to the attention of the Board that the communicable bodily fluid virus testing time frames can be expanded to 180 days without negatively impacting the risk of contracting these viruses via appearance in a regulated event. Thus, the proposed amendments should not increase the affected parties' risk of contracting these communicable viruses. Due to this, the expanded testing time frames should result in reduced medical testing costs to the party responsible for paying for the required medical examinations. Furthermore, the questionnaire can be used as an additional screening tool.

This notice of proposed amendments is not required to be referenced in a rulemaking calendar because a public comment period of 60 days is being provided. See N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments will affect boxers, mixed martial artists, kick boxers, extreme wrestlers, referees, judges and promoters. Boxers, mixed martial artists, kick boxers and extreme

wrestlers are required to undergo medical tests prior to being declared as eligible to compete. Likewise, referees and judges must also undergo annual medical examinations of the same type and thoroughness as specified by N.J.A.C. 13:46-12A.3.

Promoters will be required to review the new medical standards and ensure that the contestants which they have scheduled for a show have met them. If and when the amendments are adopted, all licensed promoters will be advised via letter from the Board of the amended medical requirements. Promoters will likely view the expanded testing time parameters as a positive. It should result in lower medical testing costs and a wider pool of available competitors to contract with who can be deemed as medically fit to engage in a regulated competition.

The medical testing requirements are designed to minimize the risk of serious injury to the contestants. The goal of these requirements is the promotion of the health and safety of the contestants. In addition, the testing should instill public confidence in the regulatory oversight of combative sporting events and in the attempts to minimize any risk of injury.

The State Athletic Control Board is also cognizant of the high cost associated with medical examinations. As such, every attempt has been made to minimize testing costs. However, the health and safety of the contestant is the primary concern of the State Athletic Control Board. It is the opinion of our medical experts that the timing of the testing for Hepatitis B and C and HIV can be expanded from 14 to 180 days without any tangible increased health risks to any involved parties.

It is anticipated that promoters, boxers, mixed martial artists, kick boxers and extreme wrestlers will react very positively to this proposal. These are the parties most affected by this proposal.

Economic Impact

Boxers, mixed martial artists, kick boxers, extreme wrestlers, referees and judges are likely to be economically affected by these amendments because they are required to undergo a thorough medical examination in order to be declared as eligible to compete or officiate. The comprehensive medical examination currently includes several scans, exams and tests which have a significant monetary cost. However, the proposed amendments should result in a reduced examination cost due to the extended acceptable communicable virus testing time frame.

Promoters may be economically affected by these amendments because they may choose to pay for the medical examinations which the boxer will be required to undergo.

The proposed amendments should result in reduced medical examination costs for boxers, kick boxers, mixed martial artists extreme wrestlers, judges and referees. Reduced medical costs could spur promoters to hold more shows in New Jersey. The lower medical costs could also result in more small scale club shows. Club shows do not include television broadcasts and the associated revenues that flow to the promoter. Therefore, due to the cost of medical testing, promoters, rarely, if ever, have scheduled club shows for New Jersey venues in recent years.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments do not exceed Federal standards. The Professional Boxing Safety Act of 1996, 15 U.S.C. 6301 et seq. does address some medical concerns but does not establish specific minimum medical testing and evaluation requirements.

Jobs Impact

The proposed amendments could result in the generation of jobs. Reduced medical testing costs could result in more boxing, mixed martial arts, kick boxing and extreme wrestling shows being held in New Jersey. Therefore, all individuals associated with an event, such as promoters, contestants, support staff and venue operators will have the opportunity to work at events held in the State.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

Some competitors may qualify as small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do impose reporting, record keeping, and other compliance requirements on small businesses. More specifically, the proposed amendments would require that contestants complete the communicable bodily fluid virus high-risk questionnaire and submit same to the Board. However, similar requirements

existed prior to this proposal with regard to the existing medical regulations. At this time, there are less than fifty licensed promoters and several hundred licensed boxers, mixed martial artists, kick boxers and extreme wrestlers. The proposed amendments will apply to all professional boxers, mixed martial artists, kick boxers and extreme wrestlers regardless of the magnitude of the promotion or if a championship is at stake. Accordingly, there is no lesser requirement based on business size. In some cases, medical examinations must be paid for by the patient (that is, boxer). In many cases, the promoter may pay for the contestant's medical examinations. The medical reports and records from the examination must be kept by the patient (that is, boxer), promoter, or must be obtainable from the physician who rendered his or her services. The promoter is ultimately responsible for ensuring submission of medical records of contestants with which they contract with to perform on their shows. The cost of the examinations and record-keeping are outweighed by the safeguarding of the health and safety of the boxers, mixed martial artists, kick boxers and extreme wrestlers. These amendments should result in the need to take communicable virus testing on a less frequent basis which translates to lessened medical testing costs. It is not anticipated that professional services are likely to be needed to comply with this proposal.

Smart Growth Impact

The proposed amendments shall have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:46-12A.2 Pre-licensure medical requirement

(a) (No change.)

(b) An examination shall be made no earlier than 30 days but no later than one day prior to licensure or the renewal thereof except for the **Hepatitis B and C** and HIV [test] **tests**, referred to in N.J.A.C. 13:46-12A.3, which shall be conducted no earlier than [14] **180** days prior to [licensure] **participation in each scheduled competition.**

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

13:46-12A.3 Thorough medical examination defined

(a) A thorough medical examination shall consist of a minimum requirement of:

1-7 (No change.)

8) [An] **A Hepatitis B and C and** HIV test conducted no earlier than [14] **180** days prior to [licensure] **participation in each scheduled competition;** [and]

9) A urinalysis[.] ; **and**

10) The completion of a Communicable Bodily Fluid Virus High-Risk Questionnaire no earlier than 180 days prior to participation in each scheduled competition. The Questionnaire will be on a form provided by the Board, and will involve questions with regard to behaviors, practices or settings that likely increase one's possible risk of contracting a communicable bodily fluid virus.

13:46-12A.5 HIV examination

All boxers in all bouts shall complete an HIV examination. [The initial test for HIV detection shall be conducted no earlier than 14 days prior to licensure. After licensure, an] **An** HIV test shall be completed by every boxer prior to his or her participation in each boxing match. Pre-fight HIV tests shall be administered no earlier than [14] **180** days prior to the boxing match. Any boxer who fails to produce the results of such a test, or who produces a test result showing that the boxer is infected with the HIV virus, shall not be permitted to box in this State. **In addition to the negative test result, a Communicable Bodily Fluid Virus High-Risk Questionnaire must be completed no earlier than 180 days prior to participation in each scheduled competition.**

13:46-12A. 6 Required hepatitis testing and recommended vaccinations

[Hepatitis B and C testing shall be completed prior to licensure or renewal of all boxers. The initial test for Hepatitis B and C detection shall be conducted no earlier than 14 days prior to licensure. In addition,] Hepatitis B and C testing shall be completed by all boxers prior to his or

her participation in each boxing match. Pre-fight Hepatitis B and C testing shall be administered no earlier than [14] **180** days prior to the scheduled boxing match. Any boxer who fails to produce a negative test result shall not be permitted to box in this State. **In addition to the negative test result, a Communicable Bodily Fluid Virus High-Risk Questionnaire must be completed no earlier than 180 days prior to participation in each scheduled competition.**

Hepatitis vaccinations, as opposed to testing, are recommended for all boxers but are not mandatory.