

Board of Pathology or the American Osteopathic Board of Pathology is the national standard for those who perform medical examiner work. Assistant Medical Examiners are not required to possess this credential per the job specification, but some possess this certification nonetheless. Therefore, to differentiate incumbents certified in Forensic Pathology versus non-certified employees and to compensate each as appropriate based on qualifications, Agency Services proposes the establishment of a new job class titled Associate Medical Examiner. It states that the proposed title will differ from the lower level Assistant Medical Examiner in that appointees to the Associate level must be board-certified in Forensic Pathology and will serve as a subject matter expert and handle more complex and sensitive assignments and investigations. Incumbents serving in the proposed new title will provide guidance and assistance to lower level Assistant Medical Examiners and will report directly to the Chief or designee. Agency Services expects that the establishment of the subject title will have a positive impact on recruitment efforts and retention of the most qualified and talented employees.

Agency Services further indicates that the new title will be assigned exclusively to the Department of Health and reside in the unclassified service pursuant to *N.J.S.A.* 11A:3-4(f), which provides that the State unclassified service shall not be subject to the provisions of the Civil Service Act unless otherwise specified and shall include the following: physicians, surgeons and dentists.¹ Agency Services also notes that it has developed a job specification for the new title and that the Governor's Office of Employee Relations has assigned the bargaining unit. Agency Services requests an effective date of August 17, 2019 for the creation of the new title to coincide with the market salary study.

CONCLUSION

In matters involving the question of whether a particular title should be allocated to the career or unclassified service, the starting point is the *New Jersey Constitution*, Article VII, sec. 1, par. 2, providing that:

Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, *as far as practicable, by examination*, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law (emphasis added).

¹ It is noted that the titles currently in the State Medical Examiner series, Assistant Medical Examiner, Deputy Chief State Medical Examiner and Chief State Medical Examiner, are all allocated to the unclassified service.

An interpretation of Civil Service law governing the unclassified service must be made in view of this constitutional mandate and a strict interpretation is generally given in matters concerning allocation to the unclassified service. *See In the Matter of Investigator, Penal Institution, et al., Essex County* (MSB, decided September 16, 1997).

In State service, *N.J.S.A.* 11A:3-4 provides that the unclassified service shall be limited to those titles it specifically designates, which includes physicians, and all other titles created by law or as the Civil Service Commission (Commission) may determine. *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Commission to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3(a) provides that a title shall be allocated to the unclassified service when:

- 1) In State service, the title is so designated under *N.J.S.A.* 11A:3-4;
- 2) In local service, the title is so designated under *N.J.S.A.* 11A:3-5;
- 3) The title is designated unclassified by another specific statute;
- 4) A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
- 5) The Civil Service Commission determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. *See Walsh v. Department of Civil Service*, 32 *N.J. Super.* 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 *N.J.* 424, 434 (1983); *State v. Clark*, 15 *N.J.* 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 *N.J. Super.* 362, 371 (App. Div. 1981). This principle of ascertaining "merit and fitness" for promotions and appointments through an open-competitive examination process is at the very heart of our merit system.

Against this background, in this matter, there is no question that the proposed new title is a physician title and that physician titles are specifically designated by *N.J.S.A.* 11A:3-4. The titles currently in the State Medical Examiner series, to which the new title would be added, are all physician titles already allocated to the unclassified service. Moreover, the record reflects the OCSME's difficulties with recruiting and retaining medical examiners and Agency Services' expectation that the establishment of the subject title, a new level in the State

Medical Examiner title series above that of Assistant, will help to alleviate those difficulties. Thus, the Commission concludes that there is good cause to permit the creation of the unclassified Associate Medical Examiner title.

ORDER

Therefore, it is ordered that this request be granted and that the title of Associate Medical Examiner is established in the unclassified service, effective August 17, 2019, to be utilized in the Department of Health.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF JANUARY, 2020



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