

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

**ADMINISTRATIVE ORDER
AND
NOTICE OF RULE WAIVER
PURSUANT TO EXECUTIVE ORDER NOS. 103 (MURPHY)(MARCH 9, 2020), 109
(MURPHY)(MARCH 23, 2020), AND 112 (MURPHY)(APRIL 1, 2020)**

COVID-19 STATE OF EMERGENCY

DCA Administrative Order No. 2020-02

Administrative Order and Temporary Rule Waiver adopted by Paul R. Rodríguez, Acting Director,
Division of Consumer Affairs

Date: April 3, 2020

Authority: N.J.S.A. 24:21-10(d); N.J.S.A. 45:1-29; Executive Order No. 103 (Murphy)(“EO 103”); Executive Order No. 109 (Murphy)(“EO 109”); Executive Order No. 112 (Murphy)(“EO112”)

Effective Date: April 3, 2020

Expiration Date: Concurrent with end of state of emergency and public health emergency declared pursuant to EO 103, whichever is later.

Introduction and Overview

This is an emergency adoption of a temporary waiver, for the duration of the state of emergency declared in response to the COVID-19 pandemic, of:

1) **APNs:**

Rules that require Advanced Practice Nurses licensed in New Jersey to maintain a collaborative agreement with a New Jersey physician in order to prescribe or order medications or devices;

2) **PAs:**

Rules that require Physician Assistants licensed in New Jersey to maintain a delegation agreement, work within a delegated scope of practice, and be supervised by a New Jersey-licensed physician in order to practice;

3) **Foreign Medical Licensees:**

Statutes and rules that prevent physicians who are, or were within the last five years, duly licensed in good standing in other countries for at least five years, and who have practiced

medicine within the last five years, from becoming licensed to practice medicine in New Jersey;

4) **CDS Registration:**

Rules that require healthcare practitioners prescribing Controlled Dangerous Substances (“CDS”) in New Jersey to hold a CDS registration issued by the Division;

5) **PMP Registration:**

Rules that require healthcare practitioners prescribing CDS to hold a CDS registration issued by the Division in order to register with the Prescription Monitoring Program (“PMP”);

6) **Retirees:**

Rules that prevent those healthcare professionals, who have been retired from practice, have held a license in this State that has for 5 years or less been in inactive or administratively suspended status, and have practiced under the authority of that license at some time within the last five years, from promptly reactivating their professional licenses; and

7) **Mortuary:**

Rules that permit only a licensed mortuary to make final disposition of human remains, and require licensees of the Board of Mortuary Science to obtain written authorization from an individual with the right to control those human remains prior to final disposition.

Paragraph 6 of EO 103 and paragraph 8 of EO 109, issued in response to the COVID-19 pandemic, authorize the Director of the Division of Consumer Affairs, acting in consultation with the Commissioner of the Department of Health, to waive rules, the enforcement of which would be detrimental to the public welfare, and to waive any restriction on the entry into practice (or any restriction on the prescription of controlled dangerous substances or on access to the prescription monitoring program) of any person who has received training for employment in a healthcare profession. Pursuant to N.J.S.A. 24:21-10(d), the Director is exercising his authority to waive CDS registration requirements by regulation where he finds them inconsistent with public health and safety. Additionally, pursuant to N.J.S.A. 45:1-29, the Director is exercising his authority to temporarily waive the requirement for criminal history background checks in emergent circumstances. Finally, EO 112 waives various statutes to which the regulatory waivers below correspond.

Pursuant to the above-cited authority, with the approval of the Governor, and in consultation with the Commissioner of the Department of Health, for the healthcare professionals referred to herein, I hereby waive the requirements for the duration of the state of emergency declared in EO 103:

1. Advanced Practice Nurses

To waive the requirement that Advanced Practice Nurses maintain a collaborative agreement with a New Jersey physician in order to prescribe medications to patients,

- a. N.J.A.C. 13:35-6.6 to the extent that the rule requires an advanced practice nurse to have a joint protocol with a collaborating physician in order to prescribe or order medications or devices;
- b. N.J.A.C. 13:37-7.9(a) and (d)8 to the extent that the rule requires an advanced practice nurse to prescribe or order medications and devices in conformity with joint protocols developed by the advanced practice nurse and the collaborating physician and that a prescription written by an advanced practice nurse include the name, title, address, telephone number, and license number of a collaborating physicians; and
- c. N.J.A.C. 13:37-8.1 to the extent that the rule requires an advanced practice nurse to have a joint protocol with a collaborating physician in order to prescribe or order medications or devices, except that,

Notwithstanding the waivers contained in this section, Advanced Practice Nurses may perform only those services that are within each Advanced Practice Nurse's education, training, experience, and competence.

2. Physician Assistants

To waive the requirement that Physician Assistants maintain a delegation agreement with and be supervised by a physician in order to practice,

- a. N.J.A.C. 13:35-2B.3 to the extent this provision:
 - i. Requires the supervision of a physician; and
 - ii. Limits the scope of practice of physician assistants to procedures enumerated or those delegated by a supervising physician;
- b. N.J.A.C. 13:35-2B.4 to the extent this provision:
 - i. Requires the performance of the procedure to be delegated to the physician assistant by the supervising physician;
 - ii. Limits the physician assistant from assisting a supervising surgeon in the operating room;
 - iii. Requires a signed delegation agreement from the supervising physician to perform medical services beyond those explicitly authorized; and
 - iv. Limits the performance of medical services to those customary to the supervising physician's specialty;

- c. N.J.A.C. 13:35-2B.3 to the extent it requires filing notification of the supervising physician with the Physician Assistant Advisory Committee;
- d. N.J.A.C. 13:35-2B.10 pertaining to requirements for supervision including, but not limited to:
 - i. Engaging in practice only under the direct and continuous supervision of a physician;
 - ii. The supervisory ratio of physician assistants to any one physician; and
 - iii. Signing a separate written delegation agreement with each supervising physician who delegates medical services;
- e. N.J.A.C. 13:35-2B.11 to the extent it requires the physician assistant to include in the patient record the supervising physician's name;
- f. N.J.A.C. 13:35-2B.12 to the extent it requires the order or prescribing of a controlled dangerous substance must be authorized by a supervising physician; except that,

Notwithstanding the above waivers contained in this section, Physician Assistants may perform only those services that are within each Physician Assistant's education, training, experience, and competence.

3. Foreign Medical Licensees

To waive the restriction on physicians (MDs, DOs, or the plenary-licensed equivalent in another country) who are licensed, in good standing, in other countries from becoming licensed to practice medicine and surgery in New Jersey, so long as they have engaged in clinical practice for at least five years, and practiced within the last five years,

- a. N.J.A.C. 13:35-3.1, pertaining to medical licensing examinations;
- b. N.J.A.C. 13:35-3.11 to 3.13, pertaining to standards for graduates of schools not approved by American national accrediting agencies, standards for graduates of schools that are approved by recognized national accrediting agencies, standards for physicians with post-secondary educational deficiencies, and criminal history record information;
- c. N.J.A.C. 13:35-3.15, pertaining to facilities at which postgraduate training may be completed;
- d. N.J.A.C. 13:35-6.13, pertaining to application and licensure fees;
- e. N.J.A.C. 13:35-6.18, requiring medical malpractice insurance coverage; and

Under the authority of N.J.S.A. 45:1-29, the Director is temporarily waiving a criminal history background record check as a condition of authorization to practice.

4. Controlled Dangerous Substance Registration Waiver

To waive restrictions on prescribers issuing prescriptions for CDS despite not holding a current CDS registration issued by the Division, pursuant to EO 103, and consistent with the authority granted to the Director under N.J.S.A. 24:21-10(d),

- a. N.J.A.C. 13:45H-1.2(c), so long as the prescriber:
 - Has been granted temporary licensure by reciprocity under the Division's expedited process in response to the COVID-19 pandemic;
 - Has the authority to prescribe medications, including controlled dangerous substances, in the individual's home state;
 - Has a valid, unrestricted Drug Enforcement Administration (DEA) registration in good standing in the individual's home state; and
 - Prescribes CDS consistent with the scope of practice for the applicable health care profession under New Jersey law and regulations.

5. Requirement that Prescribers hold CDS Registration to Register with PMP

To waive requirements that, in order to register with the PMP and access PMP data, prescribers must hold a CDS registration issued by the Division,

- a. N.J.A.C. 13:45A-35.6(a)(2), to the extent that rule requires a prescriber to hold a CDS registration.

6. Retiree Reactivation

To waive regulatory restrictions on the reentry to practice of any person who has received training for employment in a healthcare profession or who has retired from practice, and held a license in this State that has for 5 years or less been in inactive or administratively suspended status, and has practiced under the authority of that license at some time within the last five years,

- a. N.J.A.C. 13:35-3.14(e) and 3.14(h) (Physicians);
- b. N.J.A.C. 13:35-2B.15 and 2B.16 (Physician Assistants);
- c. N.J.A.C. 13:35-2A.7(e) and (h) (Midwives);
- d. N.J.A.C. 13:37-7.7(e) and (h) (Advanced Practice Nurses);

- e. N.J.A.C. 13:37-5.2(e) and (i) (Registered Professional Nurses and Licensed Practical Nurses);
- f. N.J.A.C. 13:44F-7.2 and 7.3 (Respiratory Care Therapists);
- g. N.J.A.C. 13:34-1.11 and 1.12 (Marriage and Family Therapists);
- h. N.J.A.C. 13:34-19.6 and 19.7 (Professional Counselors);
- i. N.J.A.C. 13:34-28.6 and 28.7 (Rehabilitation Counselors);
- j. N.J.A.C. 13:34C-1.6 and 1.7 (Licensed Clinical Alcohol and Drug Counselors);
- k. N.J.A.C. 13:42A-5.2 and 5.3(a) (State Certified Psychoanalysts);
- l. N.J.A.C. 13:42-10.17(f) and 10.18(a) (Psychologists);
- m. N.J.A.C. 13:44G-7.2(a) and 7.3(a) (Licensed Clinical Social Workers, Licensed Social Workers, Certified Social Workers).

7. Mortuary Science Waivers

To waive the restriction that licensees of the Board of Mortuary Science obtain express authorization from an individual with the right to control those human remains prior to taking possession or embalming,

- a. N.J.A.C. 13:36-8.7 and 8.8, which require prompt surrender of remains to and receipt of authorization to take possession from the individual with the right to control those remains.

I find that waiver of the statutes and rules above are necessary because enforcement of these existing requirements would be detrimental to the public welfare during this emergency.



Date: April 3, 2020

Paul R Rodríguez, Acting Director