






**TO:** The Honorable the Members of the Board of Regents

**FROM:** Douglas E. Lentivech 

**SUBJECT:** Proposed Addition of Section 60.13 to the Regulations of the Commissioner of Education Relating to Permitting Physicians Who Are Licensed in Another State or Territory to Provide Medical Services to Athletes and Team Personnel in New York State

**DATE:** January 2, 2020

**AUTHORIZATION(S):**  

#### **SUMMARY**

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt, as a second emergency action, the proposed addition of section 60.13 to the Regulations of the Commissioner of Education relating to permitting physicians who are licensed in another state or territory to provide medical services to athletes and team personnel in this State?

#### **Reason for Consideration**

Required by State statute (Chapter 519 of the Laws of 2018 and Chapter 199 of the Laws of 2019).

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the January 2020 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

#### **Procedural History**

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the

November 2019 meeting of the Board of Regents, effective November 5, 2019. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 20, 2019. Because the November emergency action will expire on February 2, 2020, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the February 10-11, 2020 Regents meeting and take effect as a permanent rule. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Currently, New York State is one of five states, along with Idaho, North Dakota, South Dakota and Wisconsin, that does not recognize visiting team physicians. As part of their work, team physicians cross state lines on a regular basis. However, most of them are only licensed in their respective home states, not in all the states where their teams may visit to participate in sporting events. Team physicians provide medical services to athletes and team personnel at the secondary education, post-secondary education and professional levels and attend games and team practices wherever their respective teams travel to.

On October 5, 2018, President Trump signed the Sports Medicine Clarity Act of 2018 (Sports Medicine Clarity Act), which, inter alia, extends liability insurance coverage to other states when state-licensed medical practitioners provide services to traveling athletes, athletic teams, or team personnel. Prior to this Act, state-licensed sports medicine professionals lacked insurance coverage when they crossed state lines with their teams, which exposed them to liability because insurance companies would not accept liability and pay for damages for the medical services they provided to team athletes and personnel outside of the state(s) they are licensed in. Additionally, prior to the Sports Medicine Clarity Act, physicians put their medical licenses at risk each time they crossed state lines with their teams.

However, the Sports Medicine Clarity Act did not address physician licensure requirements for out-of-state team physicians when they provide medical services to athletes and team personnel in their respective states.

On December 28, 2019, Governor Cuomo signed Chapter 519 of the Laws of 2018 (Chapter 519), which, effective June 26, 2019, inter alia, amended the Education Law, by adding a new subdivision (10) to section 6526 of the Education Law, to permit any physician who is licensed and in good standing in another state or territory, and who has a written agreement to provide medical services to athletes and team personnel of a United States sports team recognized by the United States Olympic committee or an out-of-state secondary school, institution of postsecondary education, or professional athletic organization sports team, may provide medical services to such athletes and team personnel for no more than five days before through three days after each discrete sanctioned team sporting event in New York State; and at a discrete sanctioned team sporting event in this State, as defined in the Regulations of the Commissioner of Education, provided such services are provided only to such athletes and team personnel at the discrete sanctioned team sporting event.

Subsequently, on August 29, 2019, Governor Cuomo signed Chapter 199 of the Laws of 2019 (retroactively effective June 26, 2019), inter alia, amended subdivision (10) of section 6526 of the Education Law to include the New York State Department of Health's (DOH) State Professional Board for Professional Medical Conduct, in addition to the Board of Regents, as a disciplinary and regulatory authority over any physician licensed in another state or territory providing medical services to athletes and team personnel in this State.

The proposed addition of section 60.13 to the Regulations of the Commissioner of Education implements Chapters 519 and 199 by, inter alia, defining a discrete sanctioned team sporting event as a separate and distinct team sporting event that occurs during a defined period of time in this State and whose participants include a United States sports team recognized by the United States Olympic committee or out-of-state secondary school, institution of postsecondary education, or professional athletic organization sports team. The proposed amendment also subjects the team physician to the personal and subject matter jurisdiction and disciplinary and regulatory authority of the Board of Regents and the State Board for Professional Medical Conduct established pursuant to section two hundred thirty of the public health law as if he or she is a licensee and as if the exemption established pursuant to subdivision (10) of section 6526 of the Education Law is a license. The proposed amendment further requires team physicians to comply with the applicable provisions of Title VIII of the Education Law, the Public Health Law, the Rules of the Board of Regents, the State Board for Professional Medical Conduct, and the Regulations of the Commissioner of Education and the Commissioner of Health, relating to professional misconduct, disciplinary proceedings and penalties for professional misconduct.

### **Related Regent's Items**

November 2019: Proposed Addition of Section 60.13 to the Regulations of the Commissioner of Education Relating to Permitting Physicians Who Are Licensed in Another State or Territory to Provide Medical Services to Athletes and Team Personnel in New York State (<https://www.regents.nysed.gov/common/regents/files/1119ppca1.pdf>)

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 60.13 of the Regulations of the Commissioner of Education be added, as submitted, effective February 3, 2020, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to immediately conform the Regulations of the Commissioner of Education to the requirements of Chapter 519 of the Laws of 2018 and Chapter 199 of the Laws of 2019, which permit physicians who are licensed in another state or territory to provide medical services to athletes and team personnel in New York State, as long as certain requirements are met and to ensure that the emergency adoption taken at the November meeting remains in effect until the proposed rule can be permanently adopted.

### **Timetable for Implementation**

If adopted at the January 2020 Regents meeting, the emergency rule will become effective February 3, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the February 2020 Regents meeting after expiration of the 60-day public comment period required under the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to section 207, 6504, 6506, 6507, 6510, 6521, 6522, 6526 and Chapter 519 of the Laws of 2018 and Chapter 199 of the Laws of 2019.

Section 60.13 of the Regulations of the Commissioner of Education is added, as follows:

§60.13 Exemption for Physicians Who are Licensed in Another State or Territory to Provide Medical Services to Athletes and Team Personnel in New York State

(a) Pursuant to Education Law §6526(10), any physician who is licensed and in good standing in another state or territory, and who has a written agreement to provide medical services to athletes and team personnel of a United States sports team recognized by the United States Olympic committee or an out-of-state secondary school, institution of postsecondary education, or professional athletic organization sports team, may provide medical services to such athletes and team personnel:

(1) for no more than five days before through three days after each discrete sanctioned team sporting event in this State; and

(2) at a discrete sanctioned team sporting event in this State, as defined in subdivision (b) of this section, provided such services are provided only to such athletes and team personnel at the discrete sanctioned team sporting event.

(b) Discrete sanctioned team sporting event means a recognized team sporting event that occurs during a defined time period in this State and whose participants include a United States sports team that is recognized by the United States Olympic committee or an out-of-state secondary school, institution of postsecondary education, or professional athletic organization sports team.

(c) Any person practicing as a physician in this State pursuant to this section shall be subject to the personal and subject matter jurisdiction and disciplinary and regulatory authority of the Board of Regents and the State Board for Professional Medical Conduct established pursuant to Public Health Law §130 as if he or she is a licensee and as if the exemption established pursuant to Education Law §6526 is a license. Such individual shall comply with the applicable provisions of Title VIII of the Education Law, the Public Health Law, the Rules of the Board of Regents, the State Board for Professional Medical Conduct established pursuant to Public Health Law §130, and the Regulations of the Commissioner and the Commissioner of Health, relating to professional misconduct, disciplinary proceedings and penalties for professional misconduct.

**8 NYCRR §60.13**

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed addition of section 60.13 to the Regulations of the Commissioner of Education is necessary to implement Chapter 519 of the Laws of 2018 (Chapter 519) and Chapter 199 of the Laws of 2019 (Chapter 199), which amended the Education Law, effective June 26, 2019, to permit any physician who is licensed and in good standing in another state or territory, and who has a written agreement to provide medical services to athletes and team personnel of a United States sports team recognized by the United States Olympic committee or an out-of-state secondary school, institution of postsecondary education, or professional athletic organization sports team, may provide medical services to such athletes and team personnel for no more than five days before through three days after each discrete sanctioned team sporting event in New York State; and at a discrete sanctioned team sporting event in this State, as defined in the Regulations of the Commissioner of Education, provided such services are provided only to such athletes and team personnel at the discrete sanctioned team sporting event.

The proposed addition of section 60.13 to the Regulations of the Commissioner of Education implements Chapters 519 and 199 by, inter alia, defining a discrete sanctioned team sporting event as a separate and distinct team sporting event that occurs during a defined period of time in this State and whose participants include a United States sports team recognized by the United States Olympic committee or out-of-state secondary school, institution of postsecondary education, or professional athletic organization sports team. The proposed amendment also subjects the team physician to the personal and

subject matter jurisdiction and disciplinary and regulatory authority of the Board of Regents and the State Board for Professional Medical Conduct established pursuant to section two hundred thirty of the public health law as if he or she is a licensee and as if the exemption established pursuant to subdivision (10) of section 6526 of the Education Law is a license. The proposed amendment further requires team physicians to comply with the applicable provisions of Title VIII of the Education Law, the Public Health Law, the Rules of the Board of Regents, the State Board for Professional Medical Conduct, and the Regulations of the Commissioner of Education and the Commissioner of Health, relating to professional misconduct, disciplinary proceedings and penalties for professional misconduct.

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the November 2019 meeting of the Board of Regents, effective November 5, 2019. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the February 10-11, 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the February meeting would be February 26, 2020, the date the Notice of Adoption would be published in the State Register. However, the November emergency rule will expire on February 2, 2020. If the rule were to lapse, it would impede the ability of physicians, who are licensed in another state or territory and meet certain requirements, to provide medical services to athletes and team personnel in New York State.



Therefore, a second emergency action is necessary at the January 2020 meeting for the preservation of the public health and general welfare in order to immediately conform the Regulations of the Commissioner of Education to the requirements of Chapters 519 and 199, which both became effective June 26, 2019, to permit physicians who are licensed in another state or territory to provide medical services to athletes and team personnel in New York State, as long as certain requirements are met and to ensure that the emergency adoption taken at the November meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the February 10-11, 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.