



State of New Jersey
DEPARTMENT OF HEALTH

PO BOX 358
TRENTON, N.J. 08625-0358

www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

In Re Licensure Violation:

SOUTH JERSEY RADIOLOGY
ASSOCIATES
(NJ Facility ID# NJ23333)

NOTICE OF ASSESSMENT
OF PENALTIES

TO: Pierre Scott, Administrator
South Jersey Radiology Associates
807 Haddon Avenue, Suite 5
Haddonfield, New Jersey 08033
psscott@sjra.com

The Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) (the Act) provides a statutory scheme designed to ensure that all health care facilities are of the highest quality. Pursuant to the Act and N.J.A.C. 8:43E-1.1 et seq., General Licensure Procedures and Standards Applicable to All Licensed Facilities, the Commissioner of Health (the "Department") is authorized to inspect all health care facilities and to enforce the Manual of Standards for Licensing Ambulatory Care Facilities set forth at N.J.A.C. 8:43A-1.1 et seq.

As set forth in N.J.S.A. 26:2H-5(e), "[a]t the request of the commissioner, health care facilities shall furnish to the [Department of Health] such reports and information as it may require to effectuate the provisions and purposes of this act, excluding confidential communications from patients."

Further, N.J.A.C. 8:43A-2.5 (Surveys and Full or Temporary License), which applies specifically to ambulatory care facilities, provides in subsection (d) that, "[s]urvey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients."

Finally, N.J.A.C. 8:43E-5.2(c) (Facility Surveys) provides that "[s]urvey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients."

Although federal law provides protections against the unauthorized disclosure of protected health information, uses and disclosures for public health activities, including public health investigations, are specifically excluded from the requirement to obtain authorization or to provide an opportunity to agree or object. 45 C.F.R. §164.512(b).

The Department has full authority to conduct surveys at any time and to review facility documents and patient records. Further, all Department of Health surveyors carry identification identifying them as inspectors for the State of New Jersey, Department of Health, and indicating that they are empowered to investigate and ascertain compliance with all laws and regulations under the purview of the Department.

LICENSURE VIOLATIONS

A surveyor from the Department's Health Facility, Survey and Field Operations was on-site at South Jersey Radiology Associates, P.A. (hereinafter "South Jersey" or "the facility") for a complaint survey on January 25, 2023, consisting of a tour of the facility and document review. The survey was not completed due to the facility's failure to timely cooperate with the on-site surveyor.

The surveyor arrived at the facility shortly after 9:45 a.m. and did not leave the facility until 4:45 p.m., after the facility had closed for business. During the exit conference, the surveyor acknowledged the activities that had been completed, including a tour of the facility, review of four medical records, review of one incident report form and review of certain patients' rights documents. The surveyor, however, also informed the facility staff that the survey was incomplete due to their failure to cooperate with all of the surveyor's requests, including, among other things, her request for facility policies.

Upon the surveyor's arrival, front desk staff directed the surveyor to be seated and advised her that someone would assist her shortly. While waiting, the surveyor reviewed the Patients' Rights notice posted in the waiting room. The sign failed to list the patients' right "[t]o expect and receive appropriate assessment, management and treatment of pain as an integral component of that person's care in accordance with N.J.A.C. 8:43E-6." N.J.A.C. 8:43A-16.2(a)14.

In addition, the sign did not contain the addresses and phone numbers required to be posted conspicuously throughout the facility pursuant to N.J.A.C. 8:43A-16.3(c) (for the Division of Health Facility Survey and Field Operations and for the State Long-Term Care Ombudsman and for where Medicare and Medicaid coverage may be obtained).

After a twenty to thirty minute wait, the surveyor met with Staff #1, explained the purpose of her visit, and explained that she would need an area to work, private if possible, a tour of the facility, possibly to speak to staff members and to review medical records and facility documents and policies. The surveyor stated that she would conduct all activities in such a way as not to interfere with patient care.

Initially, Staff #1 cooperated with the surveyor's requests. The surveyor requested a list of patients receiving a mammogram from October 20, 2022, through October 25, 2022, a copy of the facility's patients' rights policy, pain management policy and grievance policy and a list of patients that had filed a complaint or grievance from October 2022 through the present. Staff #1 provided a schedule of mammography patients for the dates requested and the surveyor selected four medical records from the list for review. The surveyor then reviewed the electronic medical records in the presence of Staff #1.

Upon request for the facility's patients' rights policy, the facility did not provide the policy but instead Staff #1 provided the surveyor with a copy of two documents titled "Patient's Rights" and "Notice of Privacy Practices". A review of the Patient's Rights document revealed that, unlike the signage, it did contain an updated version of the patients' rights but that it was not the facility's patients' rights policy. After reviewing the documents in the presence of Staff #1 and Staff #2, the surveyor, among other things, informed the staff that their patients' rights signage was outdated and did not include all the information required by regulation.

Shortly thereafter, Staff #2 told the surveyor, "I will need you to come back at another time. You will need to make an appointment and let us know what you will be requesting, and to speak to the techs you will need to make an appointment with them. I cannot interrupt business as usual for this." The surveyor

explained to him that complaint surveys are unannounced and that appointments are not made in advance. Staff #2 interrupted the surveyor by saying, "If you have a subpoena I can interrupt business, but I cannot interrupt business for this." The surveyor explained the interviews would be conducted so as not to interfere with patient care and would only take a couple of minutes at most. Staff #2 stated that would be intimidating the staff and disrupting their day. At that point the surveyor said that she would need to notify the office and would get back with him. Staff #2 stated he would contact corporate compliance. The surveyor told him to let her know when he had spoken to corporate compliance.

What ensued was the beginning of a lengthy, hours long delay during which the facility acknowledged that it had the requested policies but declined to provide them and also insisted that the documents that had already been provided to the surveyor be returned, despite the surveyor having explained her authority and shown her identification.

The documents provided during the visit included medical records, breast image history forms, one incident report and the documents entitled Patients' Rights and Notice of Privacy Practices. A review of these medical records (Medical Records 1-3) revealed no evidence of discharge instructions to patients. Further, upon inquiry, Staff #1 advised the surveyor that the facility does not provide discharge instructions to patients post-procedure.

The documents requested by the surveyor, but not supplied by the facility, included Medical Record 4 (copy of Breast Imaging History Form), the facility's policies for pain management, patient complaint/grievances, incident reporting and patients' rights, mammography staff credentials and the incident report and notes involving Patient #1. In addition, Staff #2 declined to permit interviews with mammography staff.

Despite the inability to complete the survey, the surveyor obtained sufficient information, at a minimum, to identify deficiencies in the areas of patients' rights and failure to provide discharge instructions to patients.

MONETARY PENALTIES:

N.J.A.C. 8:43E-3.4(a)7 allows the Department to impose a monetary penalty "[f]or violations of licensure regulations related to patient care or physical plant standards that represent a risk to the health, safety, or welfare of patients or residents of a facility or the general public, \$500.00 per violation where such deficiencies are isolated or occasional and do not represent a pattern or widespread practice throughout the facility." The Department is assessing a \$500 penalty because the facility violated licensure regulations that authorize the Department to survey an ambulatory care facility at any time and to review all facility documents and patient records. The total penalty imposed for failure to cooperate with the surveyor is **\$500**.

N.J.A.C. 8:43E-3.4(a)8 authorizes the Department to impose a monetary penalty "[w]here there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of \$1,000 per violation may be assessed for each day noncompliance is found."

Pursuant to N.J.A.C. 8:43A-6.1 (Establishment and implementation of policies and procedures), "[t]he facility shall establish and implement written patient care policies and procedures governing the services provided." More specifically, pursuant to N.J.A.C. 8:43A-16.1(a) (Policies and procedures), "[t]he facility shall establish and implement written policies and procedures regarding the rights of patients." Further, these policies and procedures must be "conspicuously posted in the facility." N.J.A.C. 16.1(a). See also N.J.A.C. 8:43A-6.3(a) ("Patient care policies and procedures shall facilitate continuity of care to patients and shall include, but not be limited to, policies and procedures concerning the following... (2) Patient rights").

The rights of ambulatory care patients are delineated in N.J.A.C. 8:43A-16.2(a)1-14. Pursuant to N.J.A.C. 8:43A-16.3(c), the addresses and phone numbers for the Division of Health Facility Survey and Field

Operations and for the State Long-Term Care Ombudsman and for where Medicare and Medicaid coverage may be obtained are required to be posted conspicuously throughout the facility.

The facility violated regulations in the area of patients' rights by not having a patients' rights policy and by failing to have the required patients' rights signage. Although the facility purportedly withheld certain documents from the surveyor due to privacy and HIPAA compliance concerns, the facility's patients' rights policy does not raise any such concerns because it would not contain any patient's protected health information and, in any event, the Department has the authority to request policies and procedures as well as patient records as part of the survey process.

The total penalty imposed for the patients' rights violations is **\$2,000**.

Pursuant to N.J.A.C. 8:43A-13.3(a) (Contents of medical records), in pertinent part, "[t]he complete medical record shall include, but not be limited to, the following:

19. Instructions given to the patient and/or family for follow-up care;
21. The discharge plan, where applicable, and a discharge summary sheet containing the patient's name, address, dates of admission and discharge, and a summary of the treatment and medication rendered during the patient's stay.

As noted previously, the surveyor's review of select medical records revealed no evidence of discharge instructions to patients. The total penalty imposed for the discharge notice violation is **\$1,000**.

The total amount of this **\$3,500** penalty for all violations is required to be paid within 30 days of receipt of this letter by certified check or money order made payable to the "Treasurer of the State of New Jersey" and forwarded to Office of Program Compliance, New Jersey Department of Health, P.O. Box 358, Trenton, New Jersey 08625-0358, Attention: Lisa King. On all future correspondence related to this Notice, please refer to Control # X23003.

INFORMAL DISPUTE RESOLUTION (IDR)

N.J.A.C. 8:43E-2.3 provides facilities the option to challenge factual survey findings set forth above by requesting Informal Dispute Resolution with Department representatives. Facilities wishing to challenge only the assessment of penalties are not entitled to IDR review, but such facilities may request a formal hearing at the Office of Administrative Law as set forth herein below. Please note that the facility's rights to IDR and administrative hearings are not mutually exclusive and both may be invoked simultaneously. IDR requests must be made in writing within ten (10) business days from receipt of this letter and must state whether the facility opts for a telephone conference, or review of facility documentation only. The request must include an original and ten (10) copies of the following:

1. The written survey findings;
2. A list of each specific deficiency the facility is contesting;
3. A specific explanation of why each contested deficiency should be removed; and
4. Any relevant supporting documentation.

Any supporting documentation or other papers submitted later than 10 business days prior to the scheduled IDR may not be considered at the discretion of the IDR panel. Send the above-referenced information to:

Nadine Jackman, Office of Program Compliance
New Jersey Department of Health
P.O. Box 358

South Jersey Radiology Associates, P.A.
Notice of Assessment of Penalties
March 31, 2023
Page 5

Trenton, New Jersey 08625-0358

The IDR review will be conducted by professional Department staff who do not participate in the survey process. Requesting IDR does not delay the imposition of any enforcement remedies.

FORMAL HEARING:

South Jersey is entitled to challenge the assessment of penalties pursuant to N.J.S.A. 26:2H-13, by requesting a formal hearing at the Office of Administrative Law (OAL). South Jersey may request a hearing to challenge any or all of the following: the factual survey findings and/or the assessed penalties. South Jersey must advise this Department within 30 days of the date of this letter if it requests an OAL hearing.

Please forward your OAL hearing request to:

Attention: OAL Hearing Requests
Office of Legal and Regulatory Compliance, New Jersey Department of Health
P.O. Box 360
Trenton, New Jersey 08625-0360

Corporations are not permitted to represent themselves in OAL proceedings. Therefore, if South Jersey is owned by a corporation, representation by counsel is required. In the event of an OAL hearing regarding the penalty, South Jersey is further required to submit a written response to each and every charge as specified in this notice, which shall accompany its written request for a hearing.

Failure to submit a written request for a hearing within 30 days from the date of this notice will render this a final agency decision. The final agency order shall thereafter have the same effect as a judgment of the court. The Department also reserves the right to pursue all other remedies available by law.

Thank you for your attention to this important matter and for your anticipated cooperation. Should you have any questions concerning this notice, please contact Lisa King, Office of Program Compliance at Lisa.King@doh.nj.gov.

Sincerely,



Gene Rosenblum, Director
Office of Program Compliance
Division of Certificate of Need and Licensing

GR:LK:JLM:nj
DATE: March 31, 2023
E-MAIL: pscott@sjra.com
REGULAR AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED
Control# AX23003

- C. Nursing Home Administrators Licensing Board
Frank Skrajewski
Pamela Lebak, Health Facility Survey and Field Operations
Kara Morris, Health Facility Survey and Field Operations
Kimberly Hansen, Health Facility Survey and Field Operations
Lori Dunn, Health Facility Survey and Field Operations
Laurie Brewer, New Jersey Long-Term Care Ombudsman