

CHAPTER 83

AN ACT concerning health care professionals and revising parts of statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.45:1-33 Short title.

1. This act shall be known and may be cited as the "Health Care Professional Responsibility and Reporting Enhancement Act."

C.26:2H-12.2b Notification relative to certain impairments of health care professionals; definitions.

2. a. A health care entity shall notify the division in writing if a health care professional who is employed by, under contract to render professional services to, or has privileges granted by, that health care entity, or who provides such services pursuant to an agreement with a health care services firm or staffing registry:

(1) for reasons relating to the health care professional's impairment, incompetency or professional misconduct, which incompetency or professional misconduct relates adversely to patient care or safety: (a) has full or partial privileges summarily or temporarily revoked or suspended, or permanently reduced, suspended or revoked; (b) has been removed from the list of eligible employees of a health services firm or staffing registry; (c) has been discharged from the staff; or (d) has had a contract to render professional services terminated or rescinded;

(2) has conditions or limitations placed on the exercise of clinical privileges or practice within the health care entity for reasons relating to the health care professional's impairment, incompetency or professional misconduct or, which incompetency or professional misconduct relates adversely to patient care or safety, including, but not limited to, second opinion requirements, non-routine concurrent or retrospective review of admissions or care, non-routine supervision by one or more members of the staff, or the completion of remedial education or training;

(3) voluntarily resigns from the staff if: (a) the health care entity is reviewing the health care professional's patient care or reviewing whether, based upon its reasonable belief, the health care professional's conduct demonstrates an impairment or incompetence or is unprofessional, which incompetence or unprofessional conduct relates adversely to patient care or safety; or (b) the health care entity, through any member of the medical or administrative staff, has expressed an intention to do such a review;

(4) voluntarily relinquishes any partial privilege or authorization to perform a specific procedure if: (a) the health care entity is reviewing the health care professional's patient care or reviewing whether, based upon its reasonable belief, the health care professional's conduct demonstrates an impairment or incompetence or is unprofessional, which incompetence or unprofessional conduct relates adversely to patient care or safety; or (b) the health care entity, through any member of the medical or administrative staff, has expressed an intention to do such a review;

(5) while under, or subsequent to, a review by the health care entity of the health care professional's patient care or professional conduct is granted a leave of absence for reasons relating to a physical, mental or emotional condition or drug or alcohol use which impairs the health care professional's ability to practice with reasonable skill and safety, except that no report is required for pregnancy-related leaves of absence or if the health care professional has sought assistance from a professional assistance or intervention program approved or designated by the division or a board to provide confidential oversight of the health care professional and is following the treatment regimen or monitoring as that program requires; or

(6) is a party to a medical malpractice liability suit, to which the health care entity is also a party, and in which there is a settlement, judgment or arbitration award.

As used in this subsection, incompetence, professional misconduct and unprofessional conduct shall not include personal conduct, such as tardiness, insubordination or other similar behavior, which does not relate to patient care or safety.

b. A health care entity shall notify the division in writing if it is in possession of information that indicates that a health care professional has failed to comply with a request to seek assistance from a professional assistance or intervention program approved or designated by the division or a board to provide confidential oversight of the health care professional, or has failed

to follow the treatment regimen or monitoring program required by that program to assure that the health care professional's physical, mental or emotional condition or drug or alcohol use does not impair the health care professional's ability to practice with reasonable skill and safety.

c. A health care entity shall notify the division in writing if any health care professional who has been the subject of a report pursuant to this section, has had conditions or limitations on the exercise of clinical privileges or practice within the health care entity altered, or privileges restored, or has resumed exercising clinical privileges that had been voluntarily relinquished.

d. In the case of a health care professional who is providing services at a health care entity pursuant to an agreement with a health care services firm or staffing agency and is the subject of a notice pursuant to this section, the health care entity shall, when it submits a notice to the division concerning that health care professional, provide a copy of the notice to the health care services firm or staffing agency.

e. The form of notification shall be prescribed by the Commissioner of Health and Senior Services, in consultation with the Commissioner of Human Services in the case of psychiatric facilities and developmental centers, and shall contain such information as may be required by the division and shall be made within seven days of the date of the action, settlement, judgment or award.

f. A health care entity which fails to provide such notice to the division or fails to cooperate with a request for information by the division, the board or the Medical Practitioner Review Panel established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8) shall be subject to such penalties as the Department of Health and Senior Services may determine pursuant to sections 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14).

g. A health care entity, or any employee thereof, which provides information to the division, the board, the Medical Practitioner Review Panel, a health care services firm or staffing agency, or the Department of Health and Senior Services, in good faith and without malice, regarding a health care professional pursuant to the provisions of this section or section 3 of P.L.1989, c.300 (C.26:2H-12.2a), is not liable for civil damages in any cause of action arising out of the provision or reporting of the information.

h. A health care entity shall provide the health care professional who is the subject of a notice pursuant to paragraphs (1), (2), (4) and (5) of subsection a. of this section and subsection c. of this section with a copy of the notice provided to the division, when the health care entity submits the notice to the division.

i. For the purposes of this section, section 3 of P.L.1989, c.300 (C.26:2H-12.2a) and section 15 of P.L.2005, c.83 (C.26:2H-12.2c):

"Board" means a professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety which licenses or otherwise authorizes a health care professional to practice a health care profession.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Health care entity" means a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance organization authorized to operate pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), a carrier which offers a managed care plan regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or county psychiatric hospital, a State developmental center, a staffing registry, and a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23).

"Health care professional" means a person licensed or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a health care profession that is regulated by the Director of the Division of Consumer Affairs or by one of the following boards: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-

Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee. "Health care professional" also includes a nurse aide and a personal care assistant certified by the Department of Health and Senior Services.

3. Section 3 of P.L.1989, c.300 (C.26:2H-12.2a) is amended to read as follows:

C.26:2H-12.2a Maintenance of records of complaints, disciplinary actions.

3. a. A health care entity shall maintain all records of all documented complaints of events related to patient care about, and disciplinary proceedings or actions against, a health care professional who is employed by or has an affiliation with the health care entity. The health care entity shall retain the information for a period of seven years and make the records, including any information the health care entity has pertaining to records maintained on the health care professional prior to the effective date of P.L.1989, c.300 (C.45:9-19.4 et al.), available to the division, the board which licenses or otherwise authorizes the health care professional to practice, the Medical Practitioner Review Panel established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8) and the Department of Health and Senior Services, as applicable, upon request.

b. A health care entity shall maintain for a period of four years all records and source data relating to its mortality, morbidity, complication, infection and readmission and shall make the records available to the division, the board which licenses or otherwise authorizes the health care professional, the review panel and the Department of Health and Senior Services, as applicable, upon request.

c. A health care entity which fails to maintain the records required pursuant to this section shall be subject to such penalties as the Department of Health and Senior Services shall determine pursuant to sections 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16 of P.L.1997, c.192 (C.26:2S-16), or the director shall determine pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.

4. Section 1 of P.L.2002, c.104 (C. 45:1-28) is amended to read as follows:

C.45:1-28 Definitions relative to criminal history background checks for health care professionals.

1. As used in this act:

"Applicant" means an applicant for licensure or other authorization to engage in a health care profession.

"Board" means a professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Health care professional" means a health care professional who is licensed or otherwise authorized, pursuant to Title 45 or Title 52 of the Revised Statutes, to practice a health care profession that is regulated by one of the following boards or by the Director of the Division of Consumer Affairs: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council or the Certified Psychoanalysts Advisory Committee.

Health care professional shall not include a nurse aide or personal care assistant who is required to undergo a criminal history record background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-83) or a homemaker-home health aide who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3).

"Licensee" means an individual who has been issued a license or other authorization to practice a health care profession.

5. Section 2 of P.L.2002, c.104 (C.45:1-29) is amended to read as follows:

C.45:1-29 Criminal history record background check required for licensure of health care professional.

2. a. A professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety or the director who regulates the practice of a health care professional, as applicable, shall not issue an initial license or other authorization to practice a health care profession that is regulated by that board or the director to any applicant therefor unless the board or director, as applicable, first determines, consistent with section 8 of P.L.1978, c.73 (C.45:1-21), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which may disqualify the applicant from being licensed or otherwise authorized to practice as a health care professional.

b. A board or the director, as applicable, shall not renew or, if renewed, shall revoke a license or other authorization to practice a health care profession that is regulated by that board or the director of any applicant therefor unless the board or director determines, consistent with section 8 of P.L.1978, c.73 (C.45:1-21), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which may provide grounds for the refusal to renew the license or other authorization to practice as a health care professional.

The director shall establish, by regulation, a schedule of dates by which the requirements of this subsection shall be implemented, so that all licensees will have been required to submit to a criminal history record background check beginning no later than four years after the effective date of P.L.2005, c.83 (C.45:1-33 et al.).

The director may, in an emergent circumstance, temporarily waive the requirement to undergo a criminal history record background check as a condition of renewal of a license or other authorization to practice a health care profession.

6. Section 3 of P.L.2002, c.104 (C.45:1-30) is amended to read as follows:

C.45:1-30 Submission of information by applicant or licensee.

3. a. An applicant or licensee who is required to undergo a criminal history record background check pursuant to section 2 of P.L.2002, c.104 (C.45:1-29) shall submit to the director that individual's name, address and fingerprints taken on standard fingerprint cards, or through any equivalent means, by a State or municipal law enforcement agency or by a private entity under contract with the State. The director is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required pursuant to this act.

b. Upon receipt of the criminal history record information for an applicant or licensee from the Federal Bureau of Investigation or the Division of State Police, the director shall immediately notify the board, as applicable.

c. If an applicant refuses to consent to, or cooperate in, the securing of a criminal history record background check, the board or director, as applicable, shall not issue a license or other authorization to practice a health care profession to the applicant and shall notify the applicant of that denial.

d. If a licensee refuses to consent to, or cooperate in, the securing of a criminal history record background check as required during the licensure or other authorization renewal

process, the board or director, as applicable, shall refuse to renew the license or other authorization of the licensee, without a hearing, and shall notify the licensee of that denial.

e. A licensee who:

(1) has permitted a license or other authorization to lapse or whose license or other authorization has been suspended, revoked or otherwise has had licensure or other authorization privileges restricted, and

(2) has not already submitted to a criminal history record background check, shall be required to submit fingerprints as part of the licensure or other authorization reinstatement process. If a reinstatement applicant refuses to consent to, or cooperate in, the securing of a criminal history record background check as required during the reinstatement process, the board or director, as applicable, shall automatically deny reinstatement of the license or other authorization, without a hearing, and shall notify the licensee of that denial.

7. Section 4 of P.L.2002, c.104 (C. 45:1-31) is amended to read as follows:

C.45:1-31 Applicant or licensee to assume cost.

4. An applicant or licensee shall be required to assume the cost of the criminal history record background check conducted pursuant to sections 1 through 3 of P.L.2002, c.104 (C.45:1-28 through 45:1-30) and section 14 of P.L.1997, c.100 (C.53:1-20.9a), in accordance with procedures determined by regulation of the director.

8. Section 9 of P.L.1989, c.300 (C.45:9-19.9) is amended to read as follows:

C.45:9-19.9 Notice received by review panel; actions, recommendations.

9. a. The review panel shall receive:

(1) Notice from a health care entity, provided through the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b);

(2) Notice from an insurer or insurance association or a practitioner, pursuant to section 2 of P.L.1983, c.247 (C.17:30D-17), regarding a medical malpractice claim settlement, judgment or arbitration award or a termination or denial of, or surcharge on, the medical malpractice liability insurance coverage of a practitioner; and

b. The review panel may receive referrals from the board which may include complaints alleging professional misconduct, incompetence, negligence or impairment of a practitioner from other health care providers and consumers of health care.

c. Upon receipt of a notice or complaint pursuant to this section, the review panel shall promptly investigate the information received and obtain any additional information that may be necessary in order to make a recommendation to the board. The review panel may seek the assistance of a consultant or other knowledgeable person, as necessary, in making its recommendation. The review panel may request the board or the Attorney General to exercise investigative powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the conduct of its investigation.

(1) If the review panel has reasonable cause to believe that a practitioner represents an imminent danger to his patients, the review panel shall immediately notify the State Board of Medical Examiners and the Attorney General and recommend the initiation of an application before the board to temporarily suspend or otherwise limit the practitioner's license pending further proceedings by the review panel or the board.

If the board temporarily suspends or otherwise limits the license, the board shall notify each health care entity with which the practitioner is affiliated and every practitioner in the State with which the practitioner is directly associated in his private practice.

(2) A practitioner who is the subject of an investigation shall be promptly notified of the investigation, pursuant to procedures adopted by regulation of the board that give consideration to the health, safety and welfare of the practitioner's patients and to the necessity for a confidential or covert investigation by the review panel. At the panel's request or upon a good cause showing by the practitioner an informal hearing shall be scheduled before the review panel

or a subcommittee of at least three review panel members, in accordance with regulations adopted by the board. The hearing shall be transcribed and the practitioner shall be entitled to a copy of the transcript, at his own expense. A practitioner who presents information to the review panel is entitled to be represented by counsel.

(3) Notwithstanding any provision of this section to the contrary, in any case in which the board determines to conduct an investigation of a practitioner who it has reasonable cause to believe represents an imminent danger to his patients, the board may direct the review panel to provide the board with its files pertaining to that practitioner and may direct the review panel to promptly terminate its investigation of that practitioner without making a recommendation pursuant to subsection d. of this section.

Upon request of the review panel, the State Board of Medical Examiners shall provide the review panel with any information contained in the board's files concerning a practitioner.

d. Upon completion of its review, the review panel shall prepare a report recommending one of the following dispositions:

(1) Recommend to the State Board of Medical Examiners that the matter be referred to the Attorney General for the initiation of disciplinary action against the practitioner who is the subject of the notice or complaint, pursuant to section 8 or 9 of P.L.1978, c.73 (C.45:1-21 or 45:1-22);

(2) Defer making a recommendation to the board pending the outcome of litigation or a health care entity disciplinary proceeding, if there is no evidence that the practitioner's professional conduct may jeopardize or improperly risk the health, safety or life of a patient;

(3) Refer the practitioner to the appropriate licensed health care practitioner treatment program recognized by the State Board of Medical Examiners and promptly notify the medical director of the board of the referral;

(4) Refer the practitioner to the appropriate focused education program recognized by the State Board of Medical Examiners and promptly notify the educational director of the board of the referral; or

(5) Find that no further action is warranted at this time.

e. A member of the State Board of Medical Examiners shall not participate by voting or any other action in any matter before the board on which the board member has participated previously as a review panel member.

f. The State Board of Medical Examiners may affirm, reject or modify any disposition of the review panel. After its consideration of the panel recommendation the board shall notify the practitioner who has been the subject of a notice or complaint of the review panel's recommendation and the board's determination.

g. Nothing in this section shall be construed to prevent or limit the State Board of Medical Examiners, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or the Attorney General from taking any other action permitted by law against a practitioner who is the subject of an investigation by the review panel.

h. For the purposes of this section, "practitioner" means a person licensed to practice: medicine and surgery under chapter 9 of Title 45 of the Revised Statutes or a medical resident or intern; or podiatry under chapter 5 of Title 45 of the Revised Statutes.

i. As used in this section, "focused education program" means an individualized and systematic process to assess the educational needs of a licensee based on scientific analysis, technical skill and interpersonal evaluation as they relate to the licensee's professional practice, and the institution of remedial education and any supervision, monitoring or limitations of the licensee.

C.45:1-34 Definitions relative to healthcare professionals.

9. As used in sections 9 through 14 and 16 and 17 of P.L.2005, c.83 (C.45:1-34 through C.45:1-39 and C.26:2H-12.2d and C.45:1-40):

"Board" means a professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety which licenses or otherwise authorizes a health care professional to practice a health care profession.

"Division" means the Division of Consumer Affairs in the Department of Law and Public

Safety;

"Health care entity" means a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance organization authorized to operate pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), a carrier which offers a managed care plan regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or county psychiatric hospital, a State developmental center, a staffing registry, and a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23).

"Health care professional" means a person licensed or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a health care profession that is regulated by the Director of the Division of Consumer Affairs or by one of the following boards: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee.

"Licensee" means an individual who has been issued a license or other authorization to practice a health care profession.

"Review panel" means the Medical Practitioner Review Panel established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8).

C.45:1-35 Immunity from civil liability.

10. A health care entity, health care professional or any other person who provides to the division, a board or the review panel, in good faith and without malice, any information concerning an act by a health care professional which the person has reasonable cause to believe involves misconduct that may be subject to disciplinary action by the division, board or review panel, as applicable, or any information relating to such conduct requested by the division, board or review panel in the exercise of its statutory responsibilities or which may be required by statute, shall not be liable for civil damages in any cause of action arising out of the provision of such information or services.

C.45:1-36 Confidentiality of information.

11. Any information provided to the division or a board concerning the conduct of a health care professional, pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b), section 5 of P.L.1978, c.73 (C.45:1-18) or any other provision of law, shall be treated as confidential pending final disposition of the inquiry or investigation, except for that information required to be shared with the Attorney General, Department of Health and Senior Services or any other government agency.

If the result of the inquiry or investigation is a finding of no basis for disciplinary action, the information shall remain confidential, except that the board or division, as applicable, may release the information to a government agency to facilitate the discharge of its public responsibilities.

The provisions of this section shall not apply to information that the division, or its designated agent, is required to include in a physician's profile pursuant to P.L.2003, c.96 (C.45:9-22.21 et seq.).

C.45:1-37 Notification to division of impairment of health care professional.

12. a. A health care professional shall promptly notify the division if that health care professional is in possession of information which reasonably indicates that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety

or welfare. A health care professional who fails to so notify the division is subject to disciplinary action and civil penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73 (C.45:1-21, 45:1-22 and 45:1-25).

b. A health care professional shall be deemed to have satisfied the reporting requirement concerning another health care professional's impairment by promptly providing notice to the division, the board or a professional assistance or intervention program approved or designated by the division or a board to provide confidential oversight of the licensee.

c. (1) There shall be no private right of action against a health care professional for failure to comply with the notification requirements of this section.

(2) There shall be no private right of action against a health care entity if a health care professional who is employed by, under contract to render professional services to, or has privileges granted by, that health care entity, or who provides such services pursuant to an agreement with a health care services firm or staffing registry, fails to comply with the notification requirements of this section.

d. A health care professional who provides notification to the division, board or review panel, in good faith and without malice, about a health care professional who is impaired or grossly incompetent or who has demonstrated unprofessional conduct, pursuant to this section, is not liable for civil damages to any person in any cause of action arising out of the notification.

e. Notwithstanding the provisions of this section to the contrary, a health care professional is not required to provide notification pursuant to this section about an impaired or incompetent health care professional if the health care professional's knowledge of the other health care professional's impairment or incompetence was obtained as a result of rendering treatment to that health care professional.

C.45:1-38 Notification to board relative to impairment, misconduct of health care professional.

13. a. Upon receipt of notice from a health care entity, or any employee thereof, pursuant to section 2 of P.L.2005,c.83 (C.26:2H-12.2b), notice from a health care professional pursuant to section 12 of P.L.2005, c.83 (C.45:1-37) or information concerning the conduct of a health care professional pursuant to section 10 of P.L.2005, c.83 (C.45:1-35), the division shall promptly notify the board that issued the license or other authorization to practice to the person to whom the notice relates.

The division or board, as applicable, shall initiate an investigation concerning the information received and obtain any additional information that may be necessary in order to determine if disciplinary charges should be pursued or if an application to temporarily suspend or otherwise limit the health care professional's license or other authorization to practice should be initiated.

b. The division or the board may seek the assistance of a consultant or other knowledgeable person in evaluating the information and may request the board or the Attorney General to exercise investigative powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the conduct of its investigation.

c. If the Attorney General files charges based on information derived from the notice from a health care entity or if the board revokes or permanently or temporarily suspends or otherwise limits the license or other authorization to practice of a health care professional, the board shall notify each health care entity with which the health care professional is affiliated.

C.45:1-39 Fraud, misrepresentation, deception; disciplinary proceedings.

14. Any health care professional seeking to become employed by, enter into a contract to render professional services to, or obtain privileges at, a health care entity, or provide professional services pursuant to an agreement with a health care services firm or staffing registry, who engages in fraud, misrepresentation or deception in the application or credentialing process shall be subject to disciplinary proceedings, pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

C.26:2H-12.2c Disclosure of information by health care entity.

15. a. A health care entity, upon the inquiry of another health care entity, shall truthfully:

(1) disclose whether, within the seven years preceding the inquiry, it provided any notice to

the division pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b), or to the review panel, as required by section 3 of P.L.1989, c.300 (C.26:2H-12.2a), with respect to the health care professional about whom the inquiry has been made, providing a copy of the form of notification and any supporting documentation that was provided to the division, a professional or occupational licensing board in the Division of Consumer Affairs in the Department of Law and Public Safety, or the review panel; and

(2) provide information about a current or former employee's job performance as it relates to patient care, as provided in this section, and, in the case of a former employee, the reason for the employee's separation.

b. For the purposes of this section, "job performance" shall relate to the suitability of the employee for re-employment at a health care entity, and the employee's skills and abilities as they relate to suitability for future employment at a health care entity. Information about a current or former employee's job performance pursuant to this paragraph shall be based on the employee's performance evaluation, and provided to another health care entity only if: (1) the evaluation has been signed by the evaluator and shared with the employee; (2) the employee has had the opportunity to respond; and (3) the employee's response, if any, has been taken into consideration when providing the information to another health care entity.

Job performance as it relates to patient care shall not include the current or former employee's participation in labor activities pursuant to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

c. A health care entity, or any employee designated by the entity, which, pursuant to this section, provides information in good faith and without malice to another health care entity concerning a health care professional, including information about a current or former employee's job performance as it relates to patient care, is not liable for civil damages in any cause of action arising out of the provision or reporting of the information.

d. health care entity which fails to truthfully disclose information to another health care entity making an inquiry pursuant to this section or fails to cooperate with such request for information by the other health care entity shall be subject to such penalties as the Department of Health and Senior Services may determine pursuant to sections 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16 of P.L.1997, c.192 (C.26:2S-16), or the director shall determine pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.

C.26:2H-12.2d Provision of information by health care professional, immunity from civil liability.

16. a. A health care professional employed by or practicing at a health care entity shall promptly notify the person at the entity, who is designated by that entity, if the health care professional is in possession of information which reasonably indicates that another health care professional who is employed by or practicing at the entity has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare.

b. A health care professional who provides information pursuant to this section, in good faith and without malice, shall not be liable for civil damages in any cause of action arising out of the provision of such information.

c. The reporting requirement in this section shall be in addition to the reporting requirement for health care professionals established in section 12 of P.L.2005, c.83 (C.45:1-37).

C.45:1-40 Health Care Professional Information Clearinghouse Coordinator.

17. a. The Division of Consumer Affairs in the Department of Law and Public Safety shall employ a full-time Health Care Professional Information Clearinghouse Coordinator to assist the Director of the Division of Consumer Affairs in compiling and disseminating to the appropriate licensing board or other applicable entity the information reported to the division by health care entities and professionals pursuant to this act and such other information as specified by the director.

b. The director shall provide that the professional and occupational licensing boards which license or otherwise authorize a health care professional to practice a health care profession with

professional and administrative staff as may be needed to carry out the purposes of this act.

18. Section 3 of P.L.2003, c.96 (C.45:9-22.23) is amended to read as follows:

C.45:9-22.23 Information included in profile of physician, podiatrist, optometrist.

3. a. The following information shall be included for each profile of a physician, podiatrist or optometrist, as applicable:

(1) Name of all medical or optometry schools attended and dates of graduation;

(2) Graduate medical or optometry education, including all internships, residencies and fellowships;

(3) Year first licensed;

(4) Year first licensed in New Jersey;

(5) Location of the physician's, podiatrist's or optometrist's office practice site or sites, as applicable;

(6) A description of any criminal convictions for crimes of the first, second, third or fourth degree within the most recent 10 years. For the purposes of this paragraph, a person shall be deemed to be convicted of a crime if the individual pleaded guilty or was found or adjudged guilty by a court of competent jurisdiction. The description of criminal convictions shall not include any convictions that have been expunged. The following statement shall be included with the information about criminal convictions: "Information provided in this section may not be comprehensive. Courts in New Jersey are required by law to provide information about criminal convictions to the State Board of Medical Examiners (or the New Jersey State Board of Optometrists).";

(7) A description of any final board disciplinary actions within the most recent 10 years, except that any such disciplinary action that is being appealed shall be identified;

(8) A description of any final disciplinary actions by appropriate licensing boards in other states within the most recent 10 years, except that any such disciplinary action that is being appealed shall be identified. The following statement shall be included with the information about disciplinary actions in other states: "Information provided in this section may not be comprehensive. The State Board of Medical Examiners (or the New Jersey State Board of Optometrists) receives information about disciplinary actions in other states from physicians (or optometrists) themselves and outside sources.";

(9) In the case of physicians and podiatrists, a description of: the revocation or involuntary restriction of privileges at a health care facility for reasons related to the practitioner's competence or misconduct or impairment taken by a health care facility's governing body or any other official of the health care facility after procedural due process has been afforded; the resignation from or nonrenewal of medical staff membership at the health care facility for reasons related to the practitioner's competence or misconduct or impairment; or the restriction of privileges at a health care facility taken in lieu of or in settlement of a pending disciplinary case related to the practitioner's competence or misconduct or impairment. Only those cases that have occurred within the most recent 10 years and that were reported by the health care facility pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b) shall be included in the profile; and

(10) All medical malpractice court judgments and all medical malpractice arbitration awards reported to the applicable board, in which a payment has been awarded to the complaining party during the most recent five years, and all settlements of medical malpractice claims reported to the board, in which a payment is made to the complaining party within the most recent five years, as follows:

(a) Pending medical malpractice claims shall not be included in the profile and information on pending medical malpractice claims shall not be disclosed to the public;

(b) A medical malpractice judgment that is being appealed shall be so identified;

(c) The context in which the payment of a medical malpractice claim occurs shall be identified by categorizing the number of judgments, arbitration awards and settlements against the physician, podiatrist or optometrist into three graduated categories: average, above average and below average number of judgments, arbitration awards and settlements. These groupings shall be arrived at by comparing the number of an individual physician's, podiatrist's or

optometrist's medical malpractice judgments, arbitration awards and settlements to the experience of other physicians, podiatrists or optometrists within the same speciality. In addition to any information provided by a physician, podiatrist or optometrist, an insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall, at the request of the division, provide data and information necessary to effectuate this subparagraph; and

(d) The following statement shall be included with the information concerning medical malpractice judgments, arbitration awards and settlements: "Settlement of a claim and, in particular, the dollar amount of the settlement may occur for a variety of reasons, which do not necessarily reflect negatively on the professional competence or conduct of the physician (or podiatrist or optometrist). A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred."

b. If requested by a physician, podiatrist or optometrist, the following information shall be included in a physician's, podiatrist's or optometrist's profile:

- (1) Names of the hospitals where the physician, podiatrist or optometrist has privileges;
- (2) Appointments of the physician or podiatrist to medical school faculties, or the optometrist to optometry school faculties, within the most recent 10 years;
- (3) Information regarding any board certification granted by a specialty board or other certifying entity recognized by the American Board of Medical Specialties, the American Osteopathic Association or the American Board of Podiatric Medicine or by any other national professional organization that has been demonstrated to have comparable standards;
- (4) Information regarding any translating services that may be available at the physician's, podiatrist's or optometrist's office practice site or sites, as applicable, or languages other than English that are spoken by the physician, podiatrist or optometrist;
- (5) Information regarding whether the physician, podiatrist or optometrist participates in the Medicaid program or accepts assignment under the Medicare program;
- (6) Information regarding the medical insurance plans in which the physician, podiatrist or optometrist is a participating provider;
- (7) Information concerning the hours during which the physician, podiatrist or optometrist conducts his practice; and
- (8) Information concerning accessibility of the practice site or sites, as applicable, to persons with disabilities.

The following disclaimer shall be included with the information supplied by the physician, podiatrist or optometrist pursuant to this subsection: "This information has been provided by the physician (or podiatrist or optometrist) but has not been independently verified by the State Board of Medical Examiners (or the New Jersey State Board of Optometrists) or the Division of Consumer Affairs."

If the physician, podiatrist or optometrist includes information regarding medical insurance plans in which the practitioner is a participating provider, the following disclaimer shall be included with that information: "This information may be subject to change. Contact your health benefits plan to verify if the physician (or podiatrist or optometrist) currently participates in the plan."

c. Before a profile is made available to the public, each physician, podiatrist or optometrist shall be provided with a copy of his profile. The physician, podiatrist or optometrist shall be given 30 calendar days to correct a factual inaccuracy that may appear in the profile and so advise the Division of Consumer Affairs or its designated agent; however, upon receipt of a written request that the division or its designated agent deems reasonable, the physician, podiatrist or optometrist may be granted an extension of up to 15 calendar days to correct a factual inaccuracy and so advise the division or its designated agent.

d. If new information or a change in existing information is received by the division concerning a physician, podiatrist or optometrist, the physician, podiatrist or optometrist shall be provided with a copy of the proposed revision and shall be given 30 calendar days to correct a factual inaccuracy and to return the corrected information to the division or its designated agent.

e. The profile and any revisions thereto shall not be made available to the public until after

the review period provided for in this section has lapsed.

C.45:1-41 Rules, regulations.

19. a. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

b. The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

Repealer.

20. The following are repealed:

Section 1 of P.L.1983, c.247 (C.26:2H-12.2);

Section 1 of P.L.1983, c.248 (C.45:9-19.1);

Section 3 of P.L.1983, c.248 (C.45:9-19.3); and

Section 5 of P.L.1989, c.300 (C.45:9-19.5).

21. This act shall take effect on the 180th day after enactment, but the Commissioner of Health and Senior Services and the Director of the Division of Consumer Affairs in the Department of Law and Public Safety may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved May 3, 2005.