

ASSEMBLY, No. 2098

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman P. CHRISTOPHER TULLY

District 38 (Bergen and Passaic)

SYNOPSIS

Requires certain health care practitioners to disclose criminal and disciplinary history to patients.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning health care disclosures and supplementing Title
2 45 of the Revised Statutes.

3

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

6

7 1. a. Except as provided in subsection d. of this section, each
8 podiatrist licensed by the State Board of Medical Examiners
9 pursuant to R.S.45:5-1 et seq. shall provide a written disclosure to
10 each patient, or to the patient's health care representative or, in the
11 case of a patient who is an unemancipated minor, to the patient's
12 parent or guardian, concerning:

13 (1) any crimes of the first, second, third, or fourth degree for
14 which the podiatrist has been convicted, when the crime directly
15 involved harm to a patient. For the purposes of this paragraph, a
16 person shall be deemed to be convicted of a crime if the individual
17 pleaded guilty or was found or adjudged guilty by a court of
18 competent jurisdiction. The disclosure shall not include any
19 convictions that have been expunged;

20 (2) any final disciplinary actions entered against the podiatrist
21 by the board involving drug or alcohol abuse directly involving
22 harm to a patient or that resulted in impairment such that the
23 podiatrist was found to be unable to engage in the safe practice of
24 podiatric medicine;

25 (3) any final disciplinary actions entered against the podiatrist
26 by the board involving any act of sexual abuse, misconduct, or
27 relations with a patient; and

28 (4) any final disciplinary actions entered against the podiatrist
29 by the board involving inappropriate prescribing that resulted in
30 harm to a patient.

31 b. A podiatrist shall provide the written disclosure required
32 pursuant to subsection a. of this section prior to a patient's first visit
33 with the podiatrist following entry of a criminal conviction or final
34 disciplinary action for which disclosure is required pursuant to
35 subsection a. of this section. The written disclosure shall include:

36 (1) a description of the offense;

37 (2) the date of the offense;

38 (3) a description of the penalties imposed for the offense;

39 (4) whether the conviction or final disciplinary action is under
40 appeal;

41 (5) whether the podiatrist is on probation or is subject to
42 practice restrictions, and the nature of any such restrictions;

43 (6) information concerning how the patient can access the
44 podiatrist's profile maintained pursuant to P.L.2003, c.96 (C.45:9-
45 22.21 et seq.); and

46 (7) any other information as may be required by the board or by
47 the Division of Consumer Affairs in the Department of Law and
48 Public Safety.

1 c. A podiatrist who is required to provide a written disclosure
2 to a patient pursuant to this section shall, prior to providing care,
3 treatment, or services to the patient, be required to obtain from the
4 patient, or from the patient's health care representative or, in the
5 case of a patient who is an unemancipated minor, the patient's
6 parent or guardian, a signed attestation that the patient,
7 representative, parent, or guardian, as applicable, has received, and
8 has had the opportunity to review, the written disclosure, and that
9 the patient, representative, parent, or guardian consents to the
10 patient receiving care, treatment, and services. The consent
11 provided pursuant to this subsection shall constitute a general
12 consent to be seen by the podiatrist, and shall not be deemed to
13 constitute consent to any given service or procedure.

14 d. A podiatrist who would otherwise be required to provide a
15 written disclosure pursuant to this section shall not be required to
16 provide the disclosure if:

17 (1) the patient requires acute treatment, care, or services but is
18 unconscious, unresponsive, or lacks the capacity to provide consent
19 pursuant to subsection c. of this section, and no health care
20 representative is available to provide consent on the patient's
21 behalf;

22 (2) the patient presents at an emergency department or urgent
23 care facility or the visit is unscheduled, including consultations in
24 an inpatient facility; or

25 (3) the podiatrist does not provide direct care, treatment, or
26 services to the patient.

27 e. A podiatrist who violates the provisions of this section shall
28 be liable to a civil penalty of up to \$1,000 for a first violation, and a
29 civil penalty of up to \$2,500 for a second or subsequent violation.
30 The civil penalty may be sued for and collected by the board in a
31 summary proceeding pursuant to the "Penalty Enforcement Law of
32 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
33

34 2. a. Except as provided in subsection d. of this section, each
35 dentist licensed to practice by the New Jersey State Board of
36 Dentistry pursuant to R.S.45:6-1 et seq. shall provide a written
37 disclosure to each patient, or to the patient's health care
38 representative or, in the case of a patient who is an unemancipated
39 minor, to the patient's parent or guardian, concerning:

40 (1) any crimes of the first, second, third, or fourth degree for
41 which the dentist has been convicted, when the crime directly
42 involved harm to a patient. For the purposes of this paragraph, a
43 person shall be deemed to be convicted of a crime if the individual
44 pleaded guilty or was found or adjudged guilty by a court of
45 competent jurisdiction. The disclosure shall not include any
46 convictions that have been expunged;

- 1 (2) any final disciplinary actions entered against the dentist by
2 the board involving drug or alcohol abuse directly involving harm
3 to a patient or that resulted in impairment such that the dentist was
4 found to be unable to engage in the safe practice of dentistry;
- 5 (3) any final disciplinary actions entered against the dentist by
6 the board involving any act of sexual abuse, misconduct, or
7 relations with a patient; and
- 8 (4) any final disciplinary actions entered against the dentist by
9 the board involving inappropriate prescribing that resulted in harm
10 to a patient.
- 11 b. A dentist shall provide the written disclosure required
12 pursuant to subsection a. of this section prior to a patient's first visit
13 with the dentist following entry of a criminal conviction or final
14 disciplinary action for which disclosure is required pursuant to
15 subsection a. of this section. The written disclosure shall include:
- 16 (1) a description of the offense;
- 17 (2) the date of the offense;
- 18 (3) a description of the penalties imposed for the offense;
- 19 (4) whether the conviction or final disciplinary action is under
20 appeal;
- 21 (5) whether the dentist is on probation or is subject to practice
22 restrictions, and the nature of any such restrictions; and
- 23 (6) any other information as may be required by the board or by
24 the Division of Consumer Affairs in the Department of Law and
25 Public Safety.
- 26 c. A dentist who is required to provide a written disclosure to a
27 patient pursuant to this section shall, prior to providing care,
28 treatment, or services to the patient, be required to obtain from the
29 patient, or from the patient's health care representative or, in the
30 case of a patient who is an unemancipated minor, the patient's
31 parent or guardian, a signed attestation that the patient,
32 representative, parent, or guardian, as applicable, has received, and
33 has had the opportunity to review, the written disclosure, and that
34 the patient, representative, parent, or guardian consents to the
35 patient receiving care, treatment, and services. The consent
36 provided pursuant to this subsection shall constitute a general
37 consent to be seen by the dentist, and shall not be deemed to
38 constitute consent to any given service or procedure.
- 39 d. A dentist who would otherwise be required to provide a
40 written disclosure pursuant to this section shall not be required to
41 provide the disclosure if:
- 42 (1) the patient requires acute treatment, care, or services but is
43 unconscious, unresponsive, or lacks the capacity to provide consent
44 pursuant to subsection c. of this section, and no health care
45 representative is available to provide consent on the patient's
46 behalf;

1 (2) the patient presents at an emergency department or urgent
2 care facility or the visit is unscheduled, including consultations in
3 an inpatient facility; or

4 (3) the dentist does not provide direct care, treatment, or
5 services to the patient.

6 e. A dentist who violates the provisions of this section shall be
7 liable to a civil penalty of up to \$1,000 for a first violation, and a
8 civil penalty of up to \$2,500 for a second or subsequent violation.
9 The civil penalty may be sued for and collected by the board in a
10 summary proceeding pursuant to the “Penalty Enforcement Law of
11 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).

12

13 3. a. Except as provided in subsection d. of this section, each
14 physician licensed by the State Board of Medical Examiners
15 pursuant to R.S.45:9-1 et seq. shall provide a written disclosure to
16 each patient, or to the patient’s health care representative or, in the
17 case of a patient who is an unemancipated minor, to the patient’s
18 parent or guardian, concerning:

19 (1) any crimes of the first, second, third, or fourth degree for
20 which the physician has been convicted, when the crime directly
21 involved harm to a patient. For the purposes of this paragraph, a
22 person shall be deemed to be convicted of a crime if the individual
23 pleaded guilty or was found or adjudged guilty by a court of
24 competent jurisdiction. The disclosure shall not include any
25 convictions that have been expunged;

26 (2) any final disciplinary actions entered against the physician
27 by the board involving drug or alcohol abuse directly involving
28 harm to a patient or that resulted in impairment such that the
29 physician was found to be unable to engage in the safe practice of
30 medicine;

31 (3) any final disciplinary actions entered against the physician
32 by the board involving any act of sexual abuse, misconduct, or
33 relations with a patient; and

34 (4) any final disciplinary actions entered against the physician
35 by the board involving inappropriate prescribing that resulted in
36 harm to a patient.

37 b. A physician shall provide the written disclosure required
38 pursuant to subsection a. of this section prior to a patient’s first visit
39 with the physician following entry of a criminal conviction or final
40 disciplinary action for which disclosure is required pursuant to
41 subsection a. of this section. The written disclosure shall include:

42 (1) a description of the offense;

43 (2) the date of the offense;

44 (3) a description of the penalties imposed for the offense;

45 (4) whether the conviction or final disciplinary action is under
46 appeal;

47 (5) whether the physician is on probation or is subject to
48 practice restrictions, and the nature of any such restrictions;

1 (6) information concerning how the patient can access the
2 physician's profile maintained pursuant to P.L.2003, c.96 (C.45:9-
3 22.21 et seq.); and

4 (7) any other information as may be required by the board or by
5 the Division of Consumer Affairs in the Department of Law and
6 Public Safety.

7 c. A physician who is required to provide a written disclosure
8 to a patient pursuant to this section shall, prior to providing care,
9 treatment, or services to the patient, be required to obtain from the
10 patient, or from the patient's health care representative or, in the
11 case of a patient who is an unemancipated minor, the patient's
12 parent or guardian, a signed attestation that the patient,
13 representative, parent, or guardian, as applicable, has received, and
14 has had the opportunity to review, the written disclosure, and that
15 the patient, representative, parent, or guardian consents to the
16 patient receiving care, treatment, and services. The consent
17 provided pursuant to this subsection shall constitute a general
18 consent to be seen by the physician, and shall not be deemed to
19 constitute consent to any given service or procedure.

20 d. A physician who would otherwise be required to provide a
21 written disclosure pursuant to this section shall not be required to
22 provide the disclosure if:

23 (1) the patient requires acute treatment, care, or services but is
24 unconscious, unresponsive, or lacks the capacity to provide consent
25 pursuant to subsection c. of this section, and no health care
26 representative is available to provide consent on the patient's
27 behalf;

28 (2) the patient presents at an emergency department or urgent
29 care facility or the visit is unscheduled, including consultations in
30 an inpatient facility; or

31 (3) the physician does not provide direct care, treatment, or
32 services to the patient.

33 e. A physician who violates the provisions of this section shall
34 be liable to a civil penalty of up to \$1,000 for a first violation, and a
35 civil penalty of up to \$2,500 for a second or subsequent violation.
36 The civil penalty may be sued for and collected by the board in a
37 summary proceeding pursuant to the "Penalty Enforcement Law of
38 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
39

40 4. a. Except as provided in subsection d. of this section, each
41 chiropractor licensed by the State Board of Chiropractic Examiners
42 pursuant to P.L.1989, c.53 (C.45:9-41.17 et seq.) shall provide a
43 written disclosure to each patient, or to the patient's health care
44 representative or, in the case of a patient who is an unemancipated
45 minor, to the patient's parent or guardian, concerning:

46 (1) any crimes of the first, second, third, or fourth degree for
47 which the chiropractor has been convicted, when the crime directly
48 involved harm to a patient. For the purposes of this paragraph, a

- 1 person shall be deemed to be convicted of a crime if the individual
2 pleaded guilty or was found or adjudged guilty by a court of
3 competent jurisdiction. The disclosure shall not include any
4 convictions that have been expunged;
- 5 (2) any final disciplinary actions entered against the
6 chiropractor by the board involving drug or alcohol abuse directly
7 involving harm to a patient or that resulted in impairment such that
8 the chiropractor was found to be unable to engage in the safe
9 practice of chiropractic; and
- 10 (3) any final disciplinary actions entered against the
11 chiropractor by the board involving any act of sexual abuse,
12 misconduct, or relations with a patient.
- 13 b. A chiropractor shall provide the written disclosure required
14 pursuant to subsection a. of this section prior to a patient's first visit
15 with the chiropractor following entry of a criminal conviction or
16 final disciplinary action for which disclosure is required pursuant to
17 subsection a. of this section. The written disclosure shall include:
- 18 (1) a description of the offense;
- 19 (2) the date of the offense;
- 20 (3) a description of the penalties imposed for the offense;
- 21 (4) whether the conviction or final disciplinary action is under
22 appeal;
- 23 (5) whether the chiropractor is on probation or is subject to
24 practice restrictions, and the nature of any such restrictions; and
- 25 (6) any other information as may be required by the board or by
26 the Division of Consumer Affairs in the Department of Law and
27 Public Safety.
- 28 c. A chiropractor who is required to provide a written
29 disclosure to a patient pursuant to this section shall, prior to
30 providing care, treatment, or services to the patient, be required to
31 obtain from the patient, or from the patient's health care
32 representative or, in the case of a patient who is an unemancipated
33 minor, the patient's parent or guardian, a signed attestation that the
34 patient, representative, parent, or guardian, as applicable, has
35 received, and has had the opportunity to review, the written
36 disclosure, and that the patient, representative, parent, or guardian
37 consents to the patient receiving care, treatment, and services. The
38 consent provided pursuant to this subsection shall constitute a
39 general consent to be seen by the chiropractor, and shall not be
40 deemed to constitute consent to any given service or procedure.
- 41 d. A chiropractor who would otherwise be required to provide
42 a written disclosure pursuant to this section shall not be required to
43 provide the disclosure if the chiropractor does not provide direct
44 care, treatment, or services to the patient.
- 45 e. A chiropractor who violates the provisions of this section
46 shall be liable to a civil penalty of up to \$1,000 for a first violation,
47 and a civil penalty of up to \$2,500 for a second or subsequent
48 violation. The civil penalty may be sued for and collected by the

1 board in a summary proceeding pursuant to the "Penalty
2 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

3
4 5. a. Except as provided in subsection d. of this section, each
5 optometrist licensed by the New Jersey State Board of Optometrists
6 pursuant to R.S.45:12-1 et seq. shall provide a written disclosure to
7 each patient, or to the patient's health care representative or, in the
8 case of a patient who is an unemancipated minor, to the patient's
9 parent or guardian, concerning:

10 (1) any crimes of the first, second, third or fourth degree for
11 which the optometrist has been convicted, when the crime directly
12 involved harm to a patient. For the purposes of this paragraph, a
13 person shall be deemed to be convicted of a crime if the individual
14 pleaded guilty or was found or adjudged guilty by a court of
15 competent jurisdiction. The disclosure shall not include any
16 convictions that have been expunged;

17 (2) any final disciplinary actions entered against the optometrist
18 by the board involving drug or alcohol abuse directly involving
19 harm to a patient or that resulted in impairment such that the
20 optometrist was found to be unable to engage in the safe practice of
21 optometry;

22 (3) any final disciplinary actions entered against the optometrist
23 by the board involving any act of sexual abuse, misconduct, or
24 relations with a patient; and

25 (4) any final disciplinary actions entered against the optometrist
26 by the board involving inappropriate prescribing that resulted in
27 harm to a patient.

28 b. An optometrist shall provide the written disclosure required
29 pursuant to subsection a. of this section prior to a patient's first visit
30 with the optometrist following entry of a criminal conviction or
31 final disciplinary action for which disclosure is required pursuant to
32 subsection a. of this section. The written disclosure shall include:

33 (1) a description of the offense;

34 (2) the date of the offense;

35 (3) a description of the penalties imposed for the offense;

36 (4) whether the conviction or final disciplinary action is under
37 appeal;

38 (5) whether the optometrist is on probation or is subject to
39 practice restrictions, and the nature of any such restrictions;

40 (6) information concerning how the patient can access the
41 optometrist's profile maintained pursuant to P.L.2003, c.96 (C.45:9-
42 22.21 et seq.); and

43 (7) any other information as may be required by the board or by
44 the Division of Consumer Affairs in the Department of Law and
45 Public Safety.

46 c. An optometrist who is required to provide a written
47 disclosure to a patient pursuant to this section shall, prior to
48 providing care, treatment, or services to the patient, be required to

1 obtain from the patient, or from the patient's health care
2 representative or, in the case of a patient who is an unemancipated
3 minor, the patient's parent or guardian, a signed attestation that the
4 patient, representative, parent, or guardian, as applicable, has
5 received, and has had the opportunity to review, the written
6 disclosure, and that the patient, representative, parent, or guardian
7 consents to the patient receiving care, treatment, and services. The
8 consent provided pursuant to this subsection shall constitute a
9 general consent to be seen by the optometrist, and shall not be
10 deemed to constitute consent to any given service or procedure.

11 d. An optometrist who would otherwise be required to provide
12 a written disclosure pursuant to this section shall not be required to
13 provide the disclosure if:

14 (1) the patient requires acute treatment, care, or services but is
15 unconscious, unresponsive, or lacks the capacity to provide consent
16 pursuant to subsection c. of this section, and no health care
17 representative is available to provide consent on the patient's
18 behalf;

19 (2) the patient presents at an emergency department or urgent
20 care facility or the visit is unscheduled, including consultations in
21 an inpatient facility; or

22 (3) the optometrist does not provide direct care, treatment, or
23 services to the patient.

24 e. An optometrist who violates the provisions of this section
25 shall be liable to a civil penalty of up to \$1,000 for a first violation,
26 and a civil penalty of up to \$2,500 for a second or subsequent
27 violation. The civil penalty may be sued for and collected by the
28 board in a summary proceeding pursuant to the "Penalty
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
30

31 6. The Director of the Division of Consumer Affairs in the
32 Department of Law and Public Safety, the State Board of Medical
33 Examiners, the New Jersey State Board of Dentistry, the State
34 Board of Chiropractic Examiners, and the New Jersey State Board
35 of Optometrists shall adopt rules and regulations, pursuant to the
36 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
37 seq.), as may be necessary to implement the provisions of this act.
38

39 7. This act shall take effect 180 days after the date of
40 enactment.
41
42

43 STATEMENT 44

45 This bill requires physicians, dentists, podiatrists, optometrists,
46 and chiropractors to disclose to patients information concerning
47 certain criminal convictions and final disciplinary actions prior to
48 providing care, treatment, or services to the patient.

1 Specifically, practitioners will be required to provide patients, or
2 their health care representatives, parents, or guardians, if
3 appropriate, with a written disclosure concerning:

- 4 • any crimes of the first, second, third, or fourth degree for
5 which the practitioner was convicted, when the crime
6 directly involved harm to a patient;
- 7 • any final disciplinary actions entered against the practitioner
8 involving drug or alcohol abuse directly involving harm to a
9 patient or that resulted in impairment such that the
10 practitioner was found to be unable to safely engage in
11 professional practice;
- 12 • any final disciplinary actions entered against the practitioner
13 involving any act of sexual abuse, misconduct, or relations
14 with a patient; and
- 15 • any final disciplinary actions entered against the practitioner
16 involving inappropriate prescribing resulting in harm to a
17 patient.

18 Practitioners will be required to provide the written disclosure
19 prior to a patient's first visit with practitioner following entry of a
20 criminal conviction or final disciplinary action for which disclosure
21 is required. The written disclosure is to include: a description of the
22 offense; the date of the offense; a description of the penalties
23 imposed for the offense; whether the conviction or final disciplinary
24 action is under appeal; whether the practitioner is on probation or is
25 subject to practice restrictions, and the nature of any such
26 restrictions; in the case of physicians, podiatrists, and optometrists,
27 information concerning how the patient can access the practitioner's
28 profile maintained pursuant to P.L.2003, c.96 (C.45:9-22.21 et
29 seq.); and any other information as may be required by the
30 applicable licensing board or by the Division of Consumer Affairs
31 in the Department of Law and Public Safety.

32 The practitioner will be required to obtain from the patient, or
33 from the patient's health care representative or, in the case of a
34 patient who is an unemancipated minor, the patient's parent or
35 guardian, a signed attestation that the patient, representative, parent,
36 or guardian, as applicable, has received, and has had the
37 opportunity to review, the written disclosure, and that the patient,
38 representative, parent, or guardian consents to the patient receiving
39 care, treatment, and services. This consent will constitute a general
40 consent to be seen by the practitioner, and will not constitute
41 consent to any given service or procedure.

42 Practitioners otherwise required to provide a written disclosure
43 under the bill will not be required to provide the disclosure in
44 situations in which: the patient requires acute treatment, care, or
45 services but is unconscious, unresponsive, or lacks the capacity to
46 provide consent, and no health care representative is available to

1 provide consent on the patient's behalf; the patient presents at an
2 emergency department or urgent care facility or the visit is
3 unscheduled, including inpatient consultations; or the practitioner
4 does not provide direct care, treatment, or services to the patient.

5 A practitioner who violates the requirements of the bill will be
6 liable to a civil penalty of up to \$1,000 for a first violation, and a
7 civil penalty of up to \$2,500 for a second or subsequent violation.