

45:9-19.4

LEGISLATIVE HISTORY CHECKLIST
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('Professional
Medical Conduct
Reform Act')

LAWS OF: 1989

CHAPTER: 300

Bill No: S2936

Sponsor(s): Codey

Date Introduced: September 29, 1989

Committee: Assembly: Higher Education & Regualted Professions

Senate: Institutions, Health & Welfare

Amended during passage: Yes SCS/2R adopted

Date of Passage: Assembly: December 18, 1989 Re-enacted 1-8-90

Senate: June 19, 1989 Re-enacted 1-8-90

Date of Approval: January 12, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: Yes

Hearings: Yes

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(over)

Reports mentioned in statements:

974.90 New Jersey. State Commissions of Investigation
H434 Report & recommendations...October, 1987.
1987f Trenton, 1987.

974.90 New Jersey. Legislature. Senate. Institutions, Health & Welfare
H434 Committee.
1987m Public hearing on the findings of the SCI Commission
 on...incompetent physicians, held 12-15-87. Trenton, 1987.

See newspaper clippings-attached:

"Bad face rough new rules," 1-14-90 Star Ledger

"Measure aims to beef safeguards..." 12-17-89 Star Ledger

"Bill targets incompetent MDs,"...12-5-89 Trentonian

"Bad doctor disciplinary bill advances," 12-5-89 Star Ledger

§1-C.45:9-19.4
§3-C.26:2H-12.2a
§5-13-C.45:9-19.5
to 45:9-19.13
§14-C.2C:21-20
§15-C.2C:21-4.1
§§16.25 -
C.45:9-19.14,
45:9-19.15
§26-Note to
45:9-2
§27-Note to
§§2.4,8,9&10

P.L.1989, CHAPTER 300, approved January 12, 1990
Senate Committee Substitute (Second Reprint) for
1988 Senate No. 2936

1 AN ACT concerning the professional conduct of certain health
2 care professionals and revising parts of statutory law.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. This act shall be known and may be cited as the
7 "Professional Medical Conduct Reform Act of 1989."

8 2. Section 1 of P.L.1983, c.247 (C.26:2H-12.2) is amended to
9 read as follows:

10 1. A health care facility licensed pursuant to [section 12 of]
11 P.L.1971, c.136 [(C.26:2H-12)] (C.26:2H-1 et seq.) or a health
12 maintenance organization operating pursuant to P.L.1973, c.337
13 (C.26:2]-1 et seq.) shall notify the [State Board of Medical
14 Examiners in writing of] Medical Practitioner Review Panel
15 established pursuant to section 8 of P.L. , c. (C.) (now
16 pending before the Legislature as this bill) in writing if:

17 a. Any disciplinary proceeding or action taken by the
18 governing body against any physician or surgeon licensed by the
19 board when the proceeding or action results in a physician's or
20 surgeon's reduction or suspension of privileges or removal or
21 resignation from the medical staff, and provide such other
22 information relating to the proceeding or action as may be
23 requested by the board; and

24 b. Any medical malpractice liability insurance claim]
25 a practitioner who is employed by, under contract to render
26 professional services to, or has privileges at that health care
27 facility or health maintenance organization:

28 a. voluntarily resigns from the staff if the facility or health
29 maintenance organization is reviewing the practitioner's conduct
30 or patient care or, through any member of the medical or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1 Assembly AME committee amendments adopted December 7, 1989.
2 Senate amendments adopted in accordance with Governor's
recommendations January 8, 1990.

1 administrative staff, has expressed an intention to do so;

2 b. voluntarily relinquishes any partial privilege to perform a
3 specific procedure if the facility or health maintenance
4 organization is reviewing the practitioner's conduct or patient
5 care or, through any member of the medical or administrative
6 staff, has expressed an intention to do so;

7 c. has full or partial privileges summarily or temporarily
8 revoked or suspended, permanently reduced, suspended or
9 revoked, has been discharged from the staff or has had a contract
10 to render professional services terminated or rescinded for
11 reasons relating to the practitioner's incompetency, misconduct
12 or impairment;

13 d. agrees to the placement of conditions or limitations on the
14 exercise of clinical privileges or practice within the health care
15 facility or health maintenance organization including, but not
16 limited to, second opinion requirements, nonroutine concurrent or
17 retrospective review of admissions or care, nonroutine
18 supervision by one or more members of the staff, or the
19 completion of remedial education or training;

20 e. is granted a leave of absence pursuant to which the
21 practitioner may not exercise clinical privileges or practice
22 within the health care facility or health maintenance
23 organization if the reasons provided in support of the leave relate
24 to any physical, mental or emotional condition or drug or alcohol
25 use, which might impair the practitioner's ability to practice
26 with reasonable skill and safety; or

27 f. is a party to a medical malpractice liability suit, in which
28 the health care facility or health maintenance organization is
29 also a party, and in which there is a settlement, judgment or
30 arbitration award (to which the health care facility is a party).

31 The form of notification shall be prescribed by the
32 Commissioner of Health, shall contain such information as may
33 be required by the board and the review panel and shall be made
34 within [30] seven days of the [proceeding or action, request] date
35 of the action, settlement, judgment or award.

36 A health care facility or health maintenance organization
37 which fails to provide such notice or shall fail to cooperate with
38 such request for information by the board or the review panel
39 shall be subject to such penalties as the State Department of

1 Health may determine pursuant to [section] sections 13 and 14 of
2 P.L.1971, c.136 (C.26:2H-13 and 14).

3 A health care facility or health maintenance organization, or
4 any employee thereof, which provides information to the board,
5 the review panel, or the Department of Health regarding a
6 practitioner pursuant to the provisions of this section or section 3
7 of P.L. , c. (C.) (now pending before the Legislature as this
8 bill), is not liable for damages for providing or reporting the
9 information unless the health care facility or health maintenance
10 organization, or employee, knowingly provided false information.

11 For the purposes of this section and section 3 of P.L. ,
12 c. (C.) (now pending before the Legislature as this bill),
13 "practitioner" means a person licensed to practice: medicine and
14 surgery under chapter 9 of Title 45 of the Revised Statutes or a
15 medical resident or intern; ¹[chiropractic under chapter 9 of Title
16 45 of the Revised Statutes;]¹ or podiatry under chapter 5 of Title
17 45 of the Revised Statutes.

18 (cf: P.L.1983, c.247, s.1)

19 3. (New section) a. A health care facility or health
20 maintenance organization shall maintain all records of all
21 complaints about, and disciplinary proceedings or actions against,
22 a practitioner who has an affiliation with the health care facility
23 or health maintenance organization. The health care facility or
24 health maintenance organization shall retain the information for
25 a period of seven years and make the records, including any
26 information the health care facility or health maintenance
27 organization has pertaining to records maintained on the
28 practitioner prior to the effective date of P.L. , c. (C.)
29 (now pending before the Legislature as this bill), available to the
30 State Board of Medical Examiners, the Medical Practitioner
31 Review Panel established pursuant to section 8 of P.L. ,
32 c. (C.) (now pending before the Legislature as this bill) and
33 the Department of Health, upon request.

34 b. A health care facility or health maintenance organization
35 shall maintain for a period of four years all records relating to its
36 mortality, morbidity, complication, infection and readmission
37 experience and shall make the records available to the board, the
38 review panel and the Department of Health, upon request.

39 c. A health care facility or health maintenance organization

1 which fails to maintain the records required pursuant to this
2 section shall be subject to such penalties as the Department of
3 Health shall determine pursuant to sections 13 and 14 of
4 P.L.1971, c.136 (C.26:2H-13 and 14).

5 4. Section 2 of P.L.1983, c.247 (C.17:30D-17) is amended to
6 read as follows:

7 2. a. Any insurer or insurance association authorized to issue
8 medical malpractice liability insurance in the State shall notify
9 the [State Board of Medical Examiners] Medical Practitioner
10 Review Panel established pursuant to section 8 of P.L. ,

11 c. (C.) (now pending before the Legislature as this bill) in
12 writing of any medical malpractice claim settlement, judgment
13 or arbitration award [for over \$25,000.00.] involving any
14 [physician or surgeon] practitioner licensed by the [board] State
15 Board of Medical Examiners and insured by the insurer or
16 insurance association. Any [physician or surgeon] practitioner
17 licensed by the board who is not covered by medical malpractice
18 liability insurance issued in this State, who has coverage through
19 a self-insured health care facility or health maintenance
20 organization, or has medical malpractice liability insurance which
21 has been issued by an insurer or insurance association from
22 outside the State shall notify the [board] review panel in writing
23 of any medical malpractice claim settlement, judgment or
24 arbitration award [for over \$25,000.00.] to which the [physician or
25 surgeon] practitioner is a party. The review panel or board, as
26 the case may be, shall not presume that the [settlement.]
27 judgment or award is conclusive evidence in any disciplinary
28 proceeding and the fact of a settlement is not admissible in any
29 disciplinary proceeding.

30 In any malpractice action against a practitioner, a settlement
31 prohibiting a complaint against the practitioner or the providing
32 of information to the review panel or board concerning the
33 underlying facts or circumstances of the action is void and
34 unenforceable.

35 b. An insurer or insurance association authorized to issue
36 medical malpractice liability insurance in the State shall notify
37 the review panel in writing of any termination or denial of
38 coverage to a practitioner or surcharge assessed on account of
39 the practitioner's practice method or medical malpractice claims

1 history.

2 c. The form of notification shall be prescribed by the
3 Commissioner of Insurance, shall contain such information as may
4 be required by the board and the review panel and shall be made
5 within [30] seven days of the settlement, judgment or award or
6 the final action for a termination or denial of, or surcharge on,
7 the medical malpractice liability insurance. Upon request of the
8 board, the review panel or the commissioner, an insurer or
9 insurance association shall provide all records regarding the
10 defense of a malpractice claim, the processing of the claim and
11 the legal proceeding; except that nothing in this subsection shall
12 be construed to authorize disclosure of any confidential
13 communication which is otherwise protected by statute, court
14 rule or common law.

15 An insurer or insurance association, or any employee thereof,
16 shall be immune from liability for furnishing information to the
17 review panel and the board in fulfillment of the requirements of
18 this section unless the insurer or insurance association, or any
19 employee thereof, knowingly provided false information.

20 d. An insurer, insurance association or practitioner who fails
21 to notify the review panel as required pursuant to this section
22 shall be subject to such penalties as the Commissioner of
23 Insurance may determine pursuant to section 12 of P.L.1975,
24 c.301 (C.17:30D-12). In addition to, or in lieu of suspension or
25 revocation, the commissioner may assess a fine which shall not
26 exceed \$1,000 for the first offense and \$2,000 for the second and
27 each subsequent offense, which may be recovered in a summary
28 proceeding, brought in the name of the State in a court of
29 competent jurisdiction pursuant to "the penalty enforcement
30 law," N.J.S.2A:58-1 et seq.

31 e. A practitioner who fails to notify the review panel as
32 required pursuant to this section shall be subject to disciplinary
33 action and civil penalties pursuant to sections 8, 9 and 12 of
34 P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

35 f. An insurer or insurance association shall make available to
36 the review panel or the board, upon request, any records of
37 termination or denial of coverage to a practitioner or surcharge
38 assessed on account of the practitioner's practice method or
39 medical malpractice claims history, which occurred up to five

1 years prior to the effective date of P.L. , c. (C.) (now
2 pending before the Legislature as this bill).

3 g. For the purposes of this section, "practitioner" means a
4 person licensed to practice: medicine and surgery under chapter
5 9 of Title 45 of the Revised Statutes or a medical resident or
6 intern; ¹[chiropractic under chapter 9 of Title 45 of the Revised
7 Statutes;]¹ or podiatry under chapter 5 of Title 45 of the Revised
8 Statutes.

9 (cf: P.L.1983, c.247, s.2)

10 5. (New section) a. A physician or medical resident or intern,
11 ¹[chiropractor]¹ or podiatrist, hereinafter referred to as a
12 "practitioner," shall promptly notify the State Board of Medical
13 Examiners if that practitioner is in possession of information
14 which reasonably indicates that another practitioner has
15 demonstrated an impairment, gross incompetence or
16 unprofessional conduct which would present an imminent danger
17 to an individual patient or to the public health, safety or
18 welfare.

19 A practitioner who fails to so notify the board is subject to
20 disciplinary action and civil penalties pursuant to sections 8,9 and
21 12 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

22 b. There shall be no private right of action against a
23 practitioner for failure to comply with the reporting
24 requirements of this section.

25 c. A practitioner who notifies the board about a practitioner
26 who is impaired or grossly incompetent or who has demonstrated
27 unprofessional conduct pursuant to this section is not liable for
28 damages to any person for notifying the board unless the
29 practitioner knowingly provided false information to the board.

30 d. Notwithstanding the provisions of this section to the
31 contrary, a practitioner is not required to notify the board about
32 an impaired or incompetent practitioner if he has knowledge of
33 the practitioner's impairment or incompetence as a result of
34 rendering treatment to the practitioner.

35 6. (New section) The State Board of Medical Examiners shall
36 employ a full-time medical director to assist the board in
37 carrying out its duties pursuant to Title 45 of the Revised
38 Statutes.

39 The medical director shall be a physician who is licensed to

1 practice medicine and surgery in the State and who is
2 knowledgeable about, or has clinical experience in, the field of
3 chemical dependency or addiction-oriented psychiatry. The
4 medical director shall receive such compensation as the board
5 shall determine and shall serve at the pleasure of the board.

6 The duties of the medical director shall include, but are not
7 limited to: reviewing complaints and reports of medical
8 malpractice, impairment, incompetence or unprofessional
9 conduct that are made to the board or the Medical Practitioner
10 Review Panel established pursuant to section 8 of P.L. , c.
11 (C.) (now pending before the Legislature as this bill), by other
12 health care providers and by the public; coordinating and assisting
13 in the investigation of these complaints and reports; and assisting
14 the panel in making its ²[dispositions] recommendations² and the
15 board in making disciplinary determinations regarding a licensee.
16 The medical director shall perform such other duties as the board
17 may require in carrying out its responsibilities under Title 45 of
18 the Revised Statutes.

19 The medical director also shall serve as the board's liaison to
20 any licensed health care practitioner treatment program
21 recognized by the board. The board, in conjunction with the
22 medical director, shall establish standards for treatment and
23 procedures for monitoring the progress of a participating
24 practitioner's treatment and for notifying the board when a
25 practitioner fails to comply with the requirements of the
26 treatment program or when a practitioner's impairment may
27 jeopardize or improperly risk the health, safety or life of a
28 patient.

29 The board and the Division of Consumer Affairs in the
30 Department of Law and Public Safety shall provide such
31 investigative, medical consulting, administrative and clerical
32 support as is necessary to assist the medical director in carrying
33 out his duties.

34 7. (New section) a. In addition to other information required
35 by the State Board of Medical Examiners on the biennial license
36 renewal form, a physician ¹[, chiropractor]¹ or podiatrist,
37 hereinafter referred to as "practitioner," shall list: the address
38 of all practice locations and the name of any other licensee
39 directly associated with the practice; the name and address of

1 each licensed health care facility and health maintenance
2 organization with which the licensee has an affiliation and the
3 nature of the affiliation; and the name and address of the
4 practitioner's medical malpractice insurer.

5 b. A practitioner shall notify the board in writing, within 21
6 days, of any changes, additions or deletions to the information
7 provided pursuant to subsection a. of this section.

8 c. In the case of a practitioner who receives his license on or
9 after the effective date of P.L. . c. (C.) (now pending
10 before the Legislature as this bill), the practitioner shall provide
11 the board with the information required pursuant to subsection a.
12 of this section as soon as practicable, but in no case later than 90
13 days after the practitioner receives his license from the board.

14 d. The board shall promptly provide the information obtained
15 pursuant to this section to the Medical Practitioner Review Panel
16 established pursuant to section 8 of P.L. . c. (C.) (now
17 pending before the Legislature as this bill).

18 8. (New section) The State Board of Medical Examiners shall
19 establish a Medical Practitioner Review Panel.

20 a. The review panel shall consist of nine members. Eight
21 members shall be appointed by the Governor with the advice and
22 consent of the Senate, as follows: four physicians licensed to
23 practice medicine and surgery in this State, at least one of whom
24 is a board certified psychiatrist or a physician experienced in the
25 field of chemical dependency and at least one of whom is
26 employed by a health maintenance organization; three consumers
27 of health care services who are not licensed health care providers
28 or the spouses of licensed health care providers ¹[, at least one of
29 whom has demonstrated expertise in the area of medical
30 malpractice]¹ ; and one administrator of a hospital who is
31 appointed upon the recommendation of the New Jersey Hospital
32 Association. One member shall be appointed by the President of
33 the State Board of Medical Examiners and shall be a member of
34 the board and shall serve ex officio.

35 A review panel member shall serve for a term of three years,
36 except that of the members first appointed, three shall serve for
37 terms of one year, three for terms of two years and two for a
38 term of three years. A review panel member is eligible for
39 reappointment but shall not serve more than two successive

1 terms in addition to any unexpired term to which he has been
2 appointed. Any vacancy in the membership of the review panel
3 shall be filled for the unexpired term in the manner provided by
4 the original appointment.

5 b. The Governor shall appoint the first chairman and vice
6 chairman of the review panel from among the members to serve
7 for a one-year term, but thereafter, the members of the panel
8 shall annually elect a chairman and vice chairman from among
9 the members. The board shall appoint an executive ¹[secretary]
10 director¹ and the board and the Division of Consumer Affairs in
11 the Department of Law and Public Safety shall provide such
12 investigative, medical consulting and clerical support as is
13 necessary to carry out the duties of the review panel. The State
14 Board of Medical Examiners member shall not serve as chairman
15 or vice chairman of the panel.

16 c. Five members of ¹[a] the¹ review panel shall constitute a
17 quorum and ¹[a] the¹ review panel shall not ²[take] make² any
18 ²[action] recommendation² without the affirmative vote of at
19 least five members of the review panel.

20 d. The members of the review panel shall be compensated on a
21 per diem basis in the amount of \$150 and shall be reimbursed for
22 actual expenses reasonably incurred in the performance of their
23 official duties. The executive ¹[secretary] director¹ of the
24 review panel shall receive such salary as determined by the
25 ¹[State Board of Medical Examiners] director of the Division of
26 Consumer Affairs¹.

27 e. The Attorney General shall provide legal staff services to
28 the review panel.

29 9. (New section) a. The review panel shall receive:

30 (1) Notice from a health care facility or health maintenance
31 organization, pursuant to section 1 of P.L.1983, c.247
32 (C.26:2H-12.2);

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

39 ²[(3) Complaints] b. The review panel may receive referrals

1 from the board which may include complaints² alleging
2 professional misconduct, incompetence, negligence or impairment
3 of a practitioner from other health care providers and consumers
4 of health care.

5 ²[b.] c.² Upon receipt of a notice or complaint pursuant to this
6 section, the review panel shall promptly investigate the
7 information received and obtain any additional information that
8 may be necessary in order to ²[determine the appropriate
9 disposition] make a recommendation to the board². The review
10 panel may seek the assistance of a consultant or other
11 knowledgeable person, as necessary, in making its
12 ²[determination] recommendation². The review panel may
13 request the board or the Attorney General to exercise
14 investigative powers pursuant to section 5 of P.L.1978, c.73
15 (C.45:1-18) in the conduct of its investigation.

16 (1) If the review panel has reasonable cause to believe that a
17 practitioner represents an imminent danger to his patients, the
18 review panel shall immediately notify the State Board of Medical
19 Examiners ¹and the Attorney General¹ and recommend ¹[that the
20 board] the initiation of an application before the board to¹
21 temporarily suspend or otherwise limit the practitioner's license
22 pending further proceedings by the review panel or the board.

23 If the board temporarily suspends or otherwise limits the
24 license, the board shall notify each licensed health care facility
25 and health maintenance organization with which the practitioner
26 is affiliated and every practitioner in the State with which the
27 practitioner is directly associated in his private ¹[medical]¹
28 practice.

29 (2) A practitioner who is the subject of an investigation shall
30 be promptly notified of the investigation, pursuant to procedures
31 adopted by regulation of the board that give consideration to the
32 health, safety and welfare of the practitioner's patients and to
33 the necessity for a confidential or covert investigation by the
34 review panel. ²[The practitioner shall be entitled to have] At the
35 panel's request or upon a good cause showing by the practitioner²
36 an informal hearing ²shall be scheduled² before the review panel
37 or a subcommittee of at least three review panel members, in
38 accordance with regulations adopted by the board ²[, to present
39 any information the practitioner deems appropriate to the

1 investigation, except as provided in paragraph (3) of this
2 subsection]². The hearing shall be transcribed and the
3 practitioner shall be entitled to a copy of the transcript, at his
4 own expense. A practitioner who presents information to the
5 review panel is entitled to be represented by counsel: -----

6 (3) Notwithstanding any provision of this section to the
7 contrary, in any case in which the board ²[is actively conducting]
8 determines to conduct² an investigation of a practitioner ²[which
9 began prior to the review panel's investigation of that
10 practitioner] who it has reasonable cause to believe represents an
11 imminent danger to his patients², the board may direct the
12 review panel to provide the board with its files pertaining to that
13 practitioner and may direct the review panel to promptly
14 terminate its investigation of that practitioner without
15 ²[effecting a disposition] making a recommendation² pursuant to
16 subsection ²[c.] d.² of this section.

17 ²Upon request of the review panel, the State Board of Medical
18 Examiners shall provide the review panel with any information
19 contained in the board's files concerning a practitioner.²

20 ²[c. On the basis of written findings of fact] d. Upon
21 completion of its review², the review panel shall ²[effect]
22 prepare a report recommending² one of the following dispositions:

23 (1) Recommend to the State Board of Medical Examiners that
24 ¹[the board take] the matter be referred to the Attorney General
25 for the initiation of¹ disciplinary action against the practitioner
26 who is the subject of the notice or complaint, pursuant to
27 R.S.45:9-16 or sections 8 or 9 of P.L.1978, c.73 (C.45:1-21 and
28 22);

29 (2) Defer making a recommendation to the board pending the
30 outcome of litigation or a health care facility or health
31 maintenance organization disciplinary proceeding, if there is no
32 evidence that the practitioner's professional conduct may
33 jeopardize or improperly risk the health, safety or life of a
34 patient;

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

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

- 1 ²[The review panel shall promptly notify the practitioner who
2 is the subject of the notice or complaint of the review panel's
3 disposition.
- 4 d. Upon request of the review panel, the State Board of
5 Medical Examiners shall provide the review panel with any
6 information contained in the board's files concerning a
7 practitioner.]²
- 8 e. A member of the State Board of Medical Examiners shall
9 not participate by voting or any other action in any matter before
10 the board on which the board member has participated previously
11 as a review panel member.
- 12 f. The State Board of Medical Examiners may affirm, reject or
13 modify any disposition of the review panel. ²After its
14 consideration of the panel recommendation the board shall notify
15 the practitioner who has been the subject of a notice or
16 complaint of the review panel's recommendation and the board's
17 determination.²
- 18 g. Nothing in this section shall be construed to prevent or limit
19 the State Board of Medical Examiners, the Director of the
20 Division of Consumer Affairs in the Department of Law and
21 Public Safety or the Attorney General from taking any other
22 action permitted by law against a practitioner who is the subject
23 of an investigation by the review panel.
- 24 h. For the purposes of this section, "practitioner" means a
25 person licensed to practice: medicine and surgery under chapter
26 9 of Title 45 of the Revised Statutes or a medical resident or
27 intern; ¹[chiropractic under chapter 9 of Title 45 of the Revised
28 Statutes;]¹ or podiatry under chapter 5 of Title 45 of the Revised
29 Statutes.
- 30 10. (New section) a. The review panel shall maintain records
31 of all notices and complaints it receives and all actions taken
32 with respect to the notices and complaints.
- 33 b. At least once a month, the review panel shall provide the
34 State Board of Medical Examiners with a summary report of all
35 information received by the review panel and all ²[actions taken]
36 recommendations made² by the review panel. Upon request of
37 the board, the review panel shall provide the board with any
38 information contained in the review panel's files concerning a
39 practitioner.

1 c. Any information concerning the professional conduct of a
2 practitioner provided to, or obtained by, the review panel is
3 confidential pending final disposition of an inquiry or
4 investigation of the practitioner by the State Board of Medical
5 Examiners, and may be disclosed only to the board, the Director
6 of the Division of Consumer Affairs in the Department of Law
7 and Public Safety and the Attorney General for the purposes of
8 carrying out their respective responsibilities pursuant to Title 45
9 of the Revised Statutes.

10 11. (New section) A member of the State Board of Medical
11 Examiners or the Medical Practitioner Review Panel, the medical
12 director to the State Board of Medical Examiners, the Attorney
13 General, any medical consultant to the board or review panel and
14 any employee of the board or review panel shall not be liable in
15 any action for damages to any person for any action taken or
16 recommendation made by him within the scope of his function as
17 a member, consultant or employee, if the action or
18 recommendation was taken or made without malice. The
19 Attorney General shall defend the person in any civil suit and the
20 State shall provide indemnification for any damages awarded.

21 12. (New section) The State Board of Medical Examiners shall,
22 by regulation, provide for the issuance of permits to, or
23 registration of, persons engaging in the practice of medicine or
24 surgery¹[.] or¹ podiatry ¹[or chiropractic]¹ while in training, and,
25 establish the scope of permissible practice by these persons.

26 13. (New section) In any case in which the State Board of
27 Medical Examiners refuses to issue, suspends, revokes or
28 otherwise conditions the license, registration, or permit of a
29 physician, ¹[chiropractor,]¹ podiatrist or medical resident or
30 intern, the board shall notify each licensed health care facility
31 and health maintenance organization with which the person is
32 affiliated and every board licensee in the State with which the
33 person is directly associated in his private medical practice.

34 14. (New section) A person is guilty of a crime of the third
35 degree if he knowingly does not possess a license or permit to
36 practice medicine and surgery ¹[.] or¹ podiatry ¹[or
37 chiropractic]¹, or knowingly has had the license or permit
38 suspended, revoked or otherwise limited by an order entered by
39 the State Board of Medical Examiners, and he:

- 1 a. engages in that practice;
- 2 b. exceeds the scope of practice permitted by the board order;
- 3 c. holds himself out to the public or any person as being
- 4 eligible to engage in that practice;
- 5 d. engages in any activity for which such license or permit is a
- 6 necessary prerequisite, including, but not limited to, the ordering
- 7 of controlled dangerous substances or prescription legend drugs
- 8 from a distributor or manufacturer; or
- 9 e. practices medicine or surgery ¹[,] ^{or}¹ podiatry ¹[or
- 10 chiropractic] under a false or assumed name or falsely
- 11 impersonates another person licensed by the board.

12 15. (New section) A person is guilty of a crime of the fourth

13 degree if he purposefully destroys, alters or falsifies any record

14 relating to the care of a medical or surgical ¹[,] ^{or}¹ podiatric ¹[or

15 chiropractic]¹ patient in order to deceive or mislead any person

16 as to information, including, but not limited to, a diagnosis, test,

17 medication, treatment or medical or psychological history,

18 concerning the patient.

19 16. (New section) A physician or podiatrist whose federal or

20 State privilege to purchase, dispense or prescribe controlled

21 substances has been revoked, suspended or otherwise limited shall

22 not be permitted to administer controlled substances in a health

23 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1

24 et seq.) or a health maintenance organization operating pursuant

25 to P.L.1973, c.337 (C.26:2J-1 et seq.), unless the administration

26 has been approved by the State Board of Medical Examiners. The

27 board may condition its approval on the physician's or

28 podiatrist's participation in a licensed health care practitioner

29 treatment program recognized by the board.

30 17. Section 2 of P.L.1977, c.285 (C.45:1-2.5) is amended to

31 read as follows:

32 2. With respect to the boards or commissions designated in

33 section 1 of P.L.1971, c.60 (C.45:1-2.1), except as otherwise

34 provided in subsection d. of this section, and notwithstanding the

35 provisions of any other law:

36 a. The officers and members shall be compensated on a per

37 diem basis in the amount of \$25.00 or an amount to be

38 determined by the Attorney General, with the approval of the

39 State Treasurer, but not to exceed \$100.00 per diem or \$2,500.00

1 annually, and shall be reimbursed for actual expenses reasonably
2 incurred in the performance of their official duties. Such moneys
3 shall be paid according to rules and regulations promulgated by
4 the Attorney General.

5 b. The executive secretary shall receive such salary as shall be
6 determined by the appointing authority within the limits of
7 available appropriations and shall serve at its pleasure. Any such
8 executive secretary who holds a certificate, license or
9 registration issued by the board or commission by which he is
10 employed shall not during such employment be permitted to
11 engage in any profession or occupation regulated by the board or
12 commission.

13 c. The head of the department to which such board or
14 commission is assigned shall maintain within any public building,
15 whether owned or leased by the State, suitable quarters for the
16 board's or commission's office and meeting place, provided that
17 no such office or meeting place shall be within premises owned or
18 occupied by an officer or member of such board or commission.

19 d. The compensation schedule for members of boards and
20 commissions provided in subsection a. of this section shall not
21 apply to the members of the New Jersey Real Estate
22 Commission, who shall be compensated pursuant to R.S.45:15-6
23 or to members of the State Board of Medical Examiners who shall
24 receive compensation of \$150 per diem.

25 (cf: P.L.1985, c.137, s.2)

26 18. R.S.45:5-8 is amended to read as follows:

27 45:5-8. The board may refuse to grant or may revoke, or may
28 suspend a license , upon ²[clear and convincing] a showing of the
29 preponderance of the credible² evidence, for any of the following
30 causes:

31 [Chronic or persistent inebriety, or the habitual use of
32 narcotics] If a licensee or applicant for license has demonstrated
33 any physical, mental or emotional condition or drug or alcohol use
34 which impairs his ability to practice with reasonable skill and
35 safety.

36 Conviction of crime involving moral turpitude; or where any
37 licensee or applicant for license has pleaded nolo contendere, non
38 vult contendere or non vult to any indictment, information,
39 allegation or complaint, alleging the commission of a crime

1 involving moral turpitude. The record of conviction or the entry
2 of such a plea in any court of this State or any other state or in
3 any of the courts of the United States or any foreign country
4 shall be sufficient warrant for the revocation or suspension of a
5 license.

6 Where any licensee or applicant for license presents to the
7 board any diploma, license or certificate that shall have been
8 obtained, signed or issued unlawfully or under fraudulent
9 representation.

10 Unprofessional, dishonorable or unethical conduct in the
11 practice of podiatry.

12 Failure to comply with the reciprocity provision under section
13 45:5-7.

14 Employment by a duly licensed podiatrist of an unlicensed
15 person or persons to perform work, which under this chapter, can
16 be legally done only by persons licensed to practice podiatry in
17 this State.

18 Conviction in a court of competent jurisdiction of a high
19 misdemeanor.

20 Fraudulently advertising.

21 Advertising in any manner, whether as an individual, through a
22 professional service corporation or through a third party on
23 behalf of a licensee, the practice of podiatry; provided, however,
24 that the following shall not be deemed to be advertising
25 prohibited under this chapter:

26 a. Public information for educational purposes on the practice
27 or profession of podiatry which does not contain the name of any
28 podiatrist licensed to practice in this State or the address of any
29 location where podiatric examination or treatment may be had or
30 is recommended or suggested;

31 b. Publication of a brief announcement of the opening of an
32 office or the removal to a new location, containing the name,
33 professional degree, address, telephone number, and office hours
34 of the licensee;

35 c. A listing in an alphabetical telephone directory of the name
36 of a licensee together with his professional degree or the
37 abbreviation therefor;

38 d. A listing in a classified telephone directory with standard
39 type limited to the name, professional degree, office and home

1 addresses and telephone numbers, and office hours of a licensee;

2 e. The use of small signs on the doors, windows and walls of a
3 licensee's office or on the building in which he maintains an
4 office setting out his name, professional degree, address and
5 office hours in lettering no larger than 4 inches in height for
6 street-level offices, and no larger than 6 inches in height for
7 offices above street-level;

8 f. Communications with or without the name of the licensee
9 distributed or mailed to his patients of record at his discretion.

10 Practicing podiatry under a name other than that under which
11 he has a license to practice podiatry or having an unlicensed
12 person practice podiatry under his name.

13 Use by a podiatrist of the words "clinic," "infirmary,"
14 "hospital," "school," "college," "university," or "institute" in
15 English or any other language in connection with any place where
16 podiatry may be practiced or demonstrated.

17 Before a license is refused, revoked or suspended under the
18 provisions of this section, the accused shall be furnished with a
19 copy of the complaint, and given a hearing before the board in
20 person or by attorney; and any person who, after such refusal or
21 revocation or suspension of license, attempts or continues the
22 practice of podiatry shall be subject to the penalties hereinafter
23 prescribed.

24 (cf: P.L.1971, c.453, s.1)

25 19. R.S.45:9-1 is amended to read as follows:

26 45:9-1. The State Board of Medical Examiners, hereinafter in
27 this chapter designated as the "board" shall consist of [15] ¹[18]
28 ¹⁶¹ members, ¹[one of whom shall be a public member]¹ [and]
29 ¹[,]¹ one of whom shall be the Commissioner of Health, or his
30 designee, ¹[one of whom shall be an executive department
31 designee as required pursuant to section 2 of P.L.1971, c.60
32 (C.45:1-2.2), two of whom shall be public members appointed by
33 the Governor pursuant to section 2 of P.L.1971, c.60 (C.45:1-2.2)
34 and 13] two of whom shall be public members and one an
35 executive department designee as required pursuant to section 2
36 of P.L.1971, c.60 (C.45:1-2.2), and 12¹ of whom shall be persons
37 of recognized professional ability and honor, and shall possess a
38 license to practice their respective professions in New Jersey,
39 and all of whom shall be appointed by the Governor in accordance

1 with the provisions of section 2 of P.L.1971, c.80 (C.45:1-2.2);
2 provided, however, that said board shall consist of nine graduates
3 of schools of medicine who shall possess the degree of M.D., and
4 in addition the membership of said board shall comprise one
5 osteopath, ¹[one chiropractor,]¹ one podiatrist and one licensed
6 bio-analytical laboratory director, who may or may not be the
7 holder of a degree of M.D. The term of office of members of the
8 board hereafter appointed shall be 3 years or until their
9 successors are appointed. Said appointees shall, within 30 days
10 after receipt of their respective commissions, take and subscribe
11 the oath or affirmation prescribed by law and file the same in the
12 office of the Secretary of State.

13 ¹[The Governor shall appoint two chiropractors who are
14 licensed to practice chiropractic in the State of New Jersey to
15 serve for a term of 3 years each and until their successors are
16 appointed and qualify, who shall be available to assist the board
17 in the administration of sections 4, 5, 6, 7, 8, 9, 12, 15 and 16 of
18 P.L.1953, c.233, which act supplements chapter 9 of Title 45 of
19 the Revised Statutes, and contains this amendment to this
20 section. Within the limits of available appropriations therefor
21 each such chiropractor shall be paid a fee of \$10.00 for each
22 applicant assigned to him for examination and when designated
23 and authorized by the board to do business on behalf of the board
24 outside of the State shall receive \$50.00 per day and when
25 performing authorized official duties in or out of the State shall
26 be reimbursed for all proper expenses incurred in the
27 performance of such duties.]¹

28 The Governor shall also appoint an advisory committee to
29 consist of four licensed bio-analytical laboratory directors, only
30 two of whom shall possess the degree of M.D., and who shall be
31 appointed from a list to be submitted by the society or
32 organization of which the persons nominated are members. The
33 members of this advisory committee shall serve for a term of 3
34 years and until their successors are appointed and qualified, and
35 shall be available to assist the board in the administration of the
36 ¹[Bio-analytical Laboratory and Laboratory Director's Act]
37 "Bio-analytical Laboratory and Laboratory Directors Act (1953),"
38 P.L.1953, c.420 (C.45:9-42.1 et seq.)¹. The advisory committee
39 shall meet at the call of the board. The board may authorize

1 reimbursement of the members of the advisory committee for
2 their actual expenses incurred in connection with the
3 performance of their duties as members of the committee.

4 (cf: P.L.1989, c.53, s.17)

5 20. R.S.45:9-16 is amended to read as follows:

6 45:9-16. The board may refuse to grant or may suspend or
7 revoke a license or the registration of a certificate or diploma to
8 practice medicine and surgery ¹[or chiropractic]¹ filed in the
9 office of any county clerk in this State under any act of the
10 Legislature, upon [proof to the satisfaction of the board] ²[clear
11 and convincing] a showing of the preponderance of the credible²
12 evidence that the holder of such license (a) has been adjudicated
13 insane, or (b) [habitually uses intoxicants] has demonstrated any
14 physical, mental or emotional condition or drug or alcohol use
15 which impairs his ability to practice with reasonable skill or
16 safety, or (c) has practiced criminal abortion, or been convicted
17 of the crime of criminal abortion, or has been convicted of crime
18 involving moral turpitude, or has pleaded nolo contendere, non
19 vult contendere or non vult to an indictment, information or
20 complaint alleging the commission of the crime of criminal
21 abortion or of crime involving moral turpitude, or (d) has been
22 determined to be physically or mentally incapacitated, (e)
23 knowingly becomes employed by any physician, surgeon,
24 homeopath, eclectic, osteopath, ¹[chiropractor],¹ or doctor who
25 advertises, or (f) shall have presented to the board any diploma,
26 license or certificate that shall have been illegally obtained or
27 shall have been signed or issued unlawfully or under fraudulent
28 representations, or obtains or shall have obtained a license to
29 practice in this State through fraud of any kind, or (g) has been
30 guilty of employing unlicensed persons to perform work which,
31 under ¹[this chapter (45:9-1 et seq.)] chapter 9 of Title 45 of the
32 Revised Statutes¹ can legally be done only by persons licensed to
33 practice medicine and surgery ¹[or chiropractic]¹ in this State, or
34 (h) has been guilty of gross malpractice or gross neglect in the
35 practice of medicine which has endangered the health or life of
36 any person, or (i) has been demonstrated professionally
37 incompetent to practice medicine, or (j) has advertised in any
38 manner, whether as an individual, through a professional service
39 corporation or through a third party on his behalf, the practice of

1 medicine and surgery ¹[or chiropractic]¹; provided, however, that
2 the following shall not be deemed to be advertising prohibited
3 under this chapter:

4 a. Public information for educational purposes on the practice
5 or profession of medicine and surgery ¹[or chiropractic]¹ which
6 does not contain the name of any person licensed to practice
7 medicine and surgery ¹[or chiropractic]¹ in this State or the
8 address of any location where medical ¹[or chiropractic]¹
9 examination or treatment may be had or is recommended or
10 suggested;

11 b. Publication of a brief announcement of the opening of an
12 office or the removal to a new location, containing the name,
13 professional degree, type of practice, address, telephone number,
14 and office hours of the licensee;

15 c. A listing in an alphabetical telephone directory of the name
16 of a licensee together with his professional degree or the
17 abbreviation therefor;

18 d. A listing in a classified telephone directory with standard
19 type limited to the name, professional degree, type of practice,
20 office and home addresses and telephone numbers, and office
21 hours of a licensee;

22 e. The use of small signs on the doors, windows and walls of a
23 licensee's office or on the building in which he maintains an
24 office, or the use of a sign directory separate and apart from, but
25 in reasonable proximity to, the building in which he maintains an
26 office as an aid to the public in locating the office, setting out
27 his name, professional degree, type of practice, address and
28 office hours in lettering no larger than 6 inches in height for
29 street-level offices, and no larger than 8 inches in height for
30 offices above street-level;

31 f. Communications with or without the name of the licensee
32 distributed or mailed to his patients of record at his discretion;

33 g. A directory of physicians for consumer use which shall
34 include the educational background, degrees, fellowships,
35 certifications, specialties, experience and any other pertinent
36 information which is related to the practice of medicine and
37 surgery of the physicians.

38 The board shall refuse to grant or shall suspend or revoke any
39 such license or the registration of any such certificate or diploma

1 upon [proof to the satisfaction of the board] ²[clear and
2 convincing] a showing of the preponderance of the credible²
3 evidence that the applicant for, or holder of, such license
4 habitually uses drugs or has been convicted of a violation of or
5 has pleaded nolo contendere, non vult contendere or non vult to
6 an indictment, information or complaint alleging a violation of
7 any Federal or State law relating to narcotic drugs. Before any
8 license, or registration of a certificate or diploma to practice
9 medicine and surgery ¹[or chiropractic]¹ filed in the office of any
10 county clerk of this State under any act of the Legislature, shall
11 be suspended or revoked, except in the case of conviction of
12 criminal abortion or conviction of crime involving moral
13 turpitude or plea of nolo contendere, non vult contendere or non
14 vult to indictment, information or complaint alleging commission
15 of the crime of criminal abortion or crime involving moral
16 turpitude, or conviction of violation of or plea of nolo
17 contendere, non vult contendere or non vult to an indictment,
18 information or complaint alleging violation of any Federal or
19 State law relating to narcotic drugs, the accused person shall be
20 furnished with a copy of the complaint and be given a hearing
21 before said board in person or by attorney, and any person whose
22 license shall be suspended or revoked in accordance with this
23 section shall be deemed an unlicensed person during the period of
24 such suspension or revocation, and as such shall be subject to the
25 penalties hereinafter prescribed for persons who practice
26 medicine and surgery ¹[or chiropractic]¹, without first having
27 obtained a license so to do. Any person whose license, or
28 registration of a certificate or diploma to practice medicine and
29 surgery ¹[or chiropractic]¹ filed in the office of any county clerk
30 of this State under any act of the Legislature, shall be suspended
31 or revoked under the authority of ¹[this chapter (45:9-1 et seq.)]
32 chapter 9 of Title 45 of the Revised Statutes¹ may, in the
33 discretion of the board be relicensed at any time to practice
34 without an examination, or have his registration of a certificate
35 or diploma, as aforesaid, reinstated, on application being made to
36 the board.

37 The record of conviction or the record of entry of a plea of
38 nolo contendere, non vult contendere or non vult in any of the
39 courts of this State, or any other state of the United States, or

1 any of the courts of the United States, or the court of any foreign
2 nation, shall be sufficient warrant for the board to refuse to
3 grant or to suspend or revoke the license or the registration of a
4 certificate or diploma to practice medicine and surgery ¹[or
5 chiropractic]¹ filed in the office of any county clerk in this State
6 under any act of the Legislature.

7 (cf: P.L.1989, c.153, s.19)

8 21. Section 3 of P.L.1983, c.248 (C.45:9-19.3) is amended to
9 read as follows:

10 3. Any information concerning the conduct of a physician or
11 surgeon provided to the State Board of Medical Examiners
12 pursuant to section 1 of [this act] P.L.1983, c.248 (C.45:9-19.1),
13 section 5 of P.L.1978, c.73 (C.45:1-18) or any other provision of
14 law, [shall be of a] is confidential [nature,] pending final
15 disposition of the inquiry or investigation by the board. If the
16 result of the inquiry or investigation is a finding of no basis for
17 disciplinary action by the board, the information shall remain
18 confidential, except that the board may release the information
19 to a government agency, for good cause shown, upon an order of
20 the Superior Court after notice to the physician or surgeon who is
21 the subject of the information and an opportunity to be heard.
22 The application for the court order shall be placed under seal.

23 (cf: P.L.1983, c.248, s.3)

24 22. N.J.S.2C:43-12 is amended to read as follows:

25 2C:43-12. Supervisory Treatment--Pretrial Intervention. a.
26 Public policy. The purpose of sections 2C:43-12 through 2C:43-22
27 of this chapter is to effectuate a Statewide program of Pretrial
28 Intervention. It is the policy of the State of New Jersey that
29 supervisory treatment should ordinarily be limited to persons who
30 have not previously been convicted of any criminal offense under
31 the laws of New Jersey, or under any criminal law of the United
32 States, or any other state when supervisory treatment would:

33 (1) Provide applicants, on an equal basis, with opportunities to
34 avoid ordinary prosecution by receiving early rehabilitative
35 services or supervision, when such services or supervision can
36 reasonably be expected to deter future criminal behavior by an
37 applicant, and when there is apparent causal connection between
38 the offense charged and the rehabilitative or supervisory need,
39 without which cause both the alleged offense and the need to

- 1 prosecute might not have occurred; or
- 2 (2) Provide an alternative to prosecution for applicants who
3 might be harmed by the imposition of criminal sanctions as
4 presently administered, when such an alternative can be expected
5 to serve as sufficient sanction to deter criminal conduct; or
- 6 (3) Provide a mechanism for permitting the least burdensome
7 form of prosecution possible for defendants charged with
8 "victimless" offenses; or
- 9 (4) Provide assistance to criminal calendars in order to focus
10 expenditure of criminal justice resources on matters involving
11 serious criminality and severe correctional problems; or
- 12 (5) Provide deterrence of future criminal or disorderly
13 behavior by an applicant in a program of supervisory treatment.
- 14 b. Admission of an applicant into a program of supervisory
15 treatment shall be measured according to the applicant's
16 amenability to correction, responsiveness to rehabilitation and
17 the nature of the offense.
- 18 c. The decision and reasons therefor made by the designated
19 judges (or assignment judges), prosecutors and program directors
20 in granting or denying applications for supervisory treatment, in
21 recommending and ordering termination from the program or
22 dismissal of charges, in all cases shall be reduced to writing and
23 disclosed to the applicant.
- 24 d. If an applicant desires to challenge the decision of the
25 prosecutor or program director not to recommend enrollment in a
26 program of supervisory treatment the proceedings prescribed
27 under section 14 shall be followed.
- 28 e. Referral. At any time prior to trial but after the filing of a
29 criminal complaint, or the filing of an accusation or the return of
30 an indictment, with the consent of the prosecutor and upon
31 written recommendation of the program director, the assignment
32 judge or a judge designated by him may postpone all further
33 proceedings against an applicant and refer said applicant to a
34 program of supervisory treatment approved by the Supreme
35 Court. Prosecutors and program directors shall consider in
36 formulating their recommendation of an applicant's participation
37 in a supervisory treatment program, among others, the following
38 criteria:
- 39 (1) The nature of the offense;

- 1 (2) The facts of the case;
- 2 (3) The motivation and age of the defendant;
- 3 (4) The desire of the complainant or victim to forego
4 prosecution;
- 5 (5) The existence of personal problems and character traits
6 which may be related to the applicant's crime and for which
7 services are unavailable within the criminal justice system, or
8 which may be provided more effectively through supervisory
9 treatment and the probability that the causes of criminal
10 behavior can be controlled by proper treatment;
- 11 (6) The likelihood that the applicant's crime is related to a
12 condition or situation that would be conducive to change through
13 his participation in supervisory treatment;
- 14 (7) The needs and interests of the victim and society;
- 15 (8) The extent to which the applicant's crime constitutes part
16 of a continuing pattern of anti-social behavior;
- 17 (9) The applicant's record of criminal and penal violations and
18 the extent to which he may present a substantial danger to others;
- 19 (10) Whether or not the crime is of an assaultive or violent
20 nature, whether in the criminal act itself or in the possible
21 injurious consequences of such behavior;
- 22 (11) Consideration of whether or not prosecution would
23 exacerbate the social problem that led to the applicant's
24 criminal act;
- 25 (12) The history of the use of physical violence toward others;
- 26 (13) Any involvement of the applicant with organized crime;
- 27 (14) Whether or not the crime is of such a nature that the
28 value of supervisory treatment would be outweighed by the public
29 need for prosecution;
- 30 (15) Whether or not the applicant's involvement with other
31 people in the crime charged or in other crime is such that the
32 interest of the State would be best served by processing his case
33 through traditional criminal justice system procedures;
- 34 (16) Whether or not the applicant's participation in pretrial
35 intervention will adversely affect the prosecution of
36 codefendants; and
- 37 (17) Whether or not the harm done to society by abandoning
38 criminal prosecution would outweigh the benefits to society from
39 channeling an offender into a supervisory treatment program.

1 f. Review of Supervisory Treatment Applications; Procedure
2 Upon Denial. Each applicant for supervisory treatment shall be
3 entitled to full and fair consideration of his application. If an
4 application is denied, the program director or the prosecutor shall
5 precisely state his findings and conclusion which shall include the
6 facts upon which the application is based and the reasons offered
7 for the denial. If the applicant desires to challenge the decision
8 of a program director not to recommend, or of a prosecutor not
9 to consent to, enrollment into a supervisory treatment program, a
10 motion shall be filed before the designated judge (or assignment
11 judge) authorized pursuant to the rules of court to enter orders.

12 g. Limitations. Supervisory treatment may occur only once
13 with respect to any defendant and any person who has previously
14 received supervisory treatment under section 27 of P.L.1970,
15 c.226 (C.24:21-27), shall not be eligible for supervisory treatment
16 under this section. However, supervisory treatment, as provided
17 herein, shall be available to a defendant irrespective of whether
18 the defendant contests his guilt of the charge or charges against
19 him.

20 h. Termination. Termination of supervisory treatment under
21 this section shall be immediately reported to the assignment
22 judge of the county who shall forward such information to the
23 Administrative Director of the Courts.

24 i. Appointment of Program Directors; Authorized Referrals.
25 Programs of supervisory treatment and appointment of the
26 program directors require approval by the Supreme Court with
27 the consent of the assignment judge and prosecutor. Referrals of
28 participants from supervisory treatment programs may be to any
29 public or private office or agency, including but not limited to,
30 programs within the probation service of the court, offering
31 counseling or any other social service likely to aid in the
32 rehabilitation of the participant and to deter the commission of
33 other offenses.

34 j. Health Care Professional Licensing Board Notification. The
35 program director shall promptly notify the State Board of
36 Medical Examiners when a State licensed physician ¹[,] or¹
37 podiatrist ¹[or chiropractor]¹ has been enrolled in a supervisory
38 treatment program after he has been charged with an offense
39 involving drugs or alcohol.

1 (cf: P.L.1987, c.106, s.14)

2 23. N.J.S.2C:52-2 is amended to read as follows:

3 2C:52-2. Indictable Offenses. a. In all cases, except as herein
4 provided, wherein a person has been convicted of a crime under
5 the laws of this State and who has not been convicted of any prior
6 or subsequent crime, whether within this State or any other
7 jurisdiction, and has not been adjudged a disorderly person or
8 petty disorderly person on more than two occasions may, after
9 the expiration of a period of 10 years from the date of his
10 conviction, payment of fine, satisfactory completion of probation
11 or parole, or release from incarceration, whichever is later,
12 present a duly verified petition as provided in section 2C:52-7 to
13 the Superior Court in the county in which the conviction was
14 entered praying that such conviction and all records and
15 information pertaining thereto be expunged.

16 Although subsequent convictions for no more than two
17 disorderly or petty disorderly offenses shall not be an absolute
18 bar to relief, the nature of those conviction or convictions and
19 the circumstances surrounding them shall be considered by the
20 court and may be a basis for denial of relief if they or either of
21 them constitute a continuation of the type of unlawful activity
22 embodied in the criminal conviction for which expungement is
23 sought.

24 b. Records of conviction pursuant to statutes repealed by this
25 Code for the crimes of murder, manslaughter, treason, anarchy,
26 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
27 robbery, embracery, or a conspiracy or any attempt to commit
28 any of the foregoing, or aiding, assisting or concealing persons
29 accused of the foregoing crimes, shall not be expunged.

30 Records of conviction for the following crimes specified in the
31 New Jersey Code of Criminal Justice shall not be subject to
32 expungement: Section 2C:11-1 et seq. (Criminal Homicide),
33 except death by auto as specified in section 2C:11-5; section
34 2C:13-1 (Kidnapping); section 2C:14-2 (Aggravated Sexual
35 Assault); section 2C:15-1 (Robbery); section 2C:17-1 (Arson and
36 Related Offenses); section 2C:28-1 (Perjury); section 2C:28-2
37 (False Swearing) and conspiracies or attempts to commit such
38 crimes.

39 c. In the case of conviction for the sale or distribution of a

1 controlled dangerous substance or possession thereof with intent
2 to sell, expungement shall be denied except where the crimes
3 relate to:

4 (1) Marijuana, where the total quantity sold, distributed or
5 possessed with intent to sell was 25 grams or less, or

6 (2) Hashish, where the total quantity sold, distributed or
7 possessed with intent to sell was 5 grams or less.

8 d. In the case of a State licensed physician ¹[,] or ¹ podiatrist
9 ¹[or chiropractor] ¹ convicted of an offense involving drugs or
10 alcohol or pursuant to section 14 or 15 P.L. , c. (C.)(now
11 pending before the Legislature as this bill), the court shall notify
12 the State Board of Medical Examiners upon receipt of a petition
13 for expungement of the conviction and records and information
14 pertaining thereto.

15 (cf: P.L.1979, c.178, s.109)

16 24. Section 1 of P.L.1979, c.128 (C.2A:84A-22.10) is amended
17 to read as follows:

18 1. Any person who serves as a member of, is staff to, under a
19 contract or other formal agreement with, participates with, or
20 assists with respect to an action of:

21 a. A hospital or long-term health care facility committee
22 established to administer a utilization review plan for such
23 hospital or long-term health care facility; or

24 b. A hospital medical staff committee having the
25 responsibility of evaluation and improvement of the quality of
26 care rendered in such hospital; or

27 c. (Deleted by amendment, P.L.1985, c.506.)

28 d. A hospital peer-review committee having the responsibility
29 for the review of the qualifications and credentials of physicians
30 or dentists seeking appointment or reappointment to the medical
31 or dental staff of a hospital, or of questions of the clinical or
32 administrative competence of physicians or dentists so appointed,
33 or of matters concerning limiting the scope of hospital privileges
34 of physicians or dentists on the staff, or of matters concerning
35 the dismissal or discharge of same; or

36 e. A peer-review, ethics, grievance, judicial, quality assurance
37 or professional relations committee or subcommittee thereof of a
38 local, county or State medical, dental, podiatric, optometric,
39 psychological, veterinary, chiropractic or pharmaceutical society

1 or long-term health care facility association, [or] of any such
2 society or association itself, or of a health maintenance
3 organization, when such society [or], association or organization
4 or committee or subcommittee thereof is performing any
5 peer-review, ethics, grievance, judicial, quality assurance or
6 professional relations review function that [is]

7 (1) [Described] is described in subsections a., b., and d., above
8 of this section; or

9 (2) Involves any controversy or dispute between (a) a physician,
10 dentist, podiatrist, optometrist, psychologist, veterinarian,
11 chiropractor, pharmacist, nurse, dietitian or licensed
12 administrator and a patient or, in the case of a veterinarian, the
13 patient's owner, concerning the diagnosis, treatment or care of
14 such patient or the fees or charges therefor. (b) a physician,
15 dentist, podiatrist, optometrist, psychologist, veterinarian,
16 chiropractor, pharmacist, nurse, dietitian or licensed
17 administrator and a provider of medical, dental, podiatric,
18 veterinary, optometric, psychological, or pharmaceutical benefits
19 concerning any medical or health charges or fees of such
20 physician, dentist, podiatrist, optometrist, psychologist,
21 veterinarian, chiropractor, pharmacist, nurse, dietitian or
22 licensed administrator, or (c) physicians, dentists, podiatrists,
23 optometrists, psychologists, veterinarians, chiropractors,
24 pharmacists, nurses, dietitians or licensed administrators:

25 shall not be liable in damages to any person for any action taken
26 or recommendation made by him within the scope of his function
27 [as a member of such] with the committee, subcommittee or
28 society in the performance of said peer-review, ethics,
29 grievance, judicial, quality assurance or professional relations
30 review functions, if such action or recommendation was taken or
31 made without malice and in the reasonable belief after
32 reasonable investigation that such action or recommendation was
33 warranted upon the basis of facts disclosed.

34 (cf: P.L.1987, c.241, s.1)

35 25. (New section) a. The State Board of Medical Examiners
36 shall increase the licensing fee of physicians ¹[, chiropractors,]
37 and podiatrists in an amount sufficient to fund the costs of
38 establishing and operating the Medical Practitioner Review Panel
39 and the position of medical director, established pursuant to

1 P.L. , c. (C.) (now pending before the Legislature as this
2 bill).

3 b. The board shall establish a reduced licensing fee for
4 physicians ¹[, chiropractors]¹ and podiatrists who are 65 years of
5 age or older and who have no affiliation status with a licensed
6 health care facility or a health maintenance organization.

7 26. The State Board of Medical Examiners shall, pursuant to
8 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
9 et seq.), adopt rules and regulations necessary to carry out the
10 provisions of this act, including rules and regulations governing
11 the operation of the Medical Practitioner Review Panel.

12 27. This act shall take effect immediately, except that
13 sections 2, 4, 8, 9 and 10 shall take effect on the 180th day
14 following enactment.

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HEALTH

18

Regulated Professions

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20 Designated the "Professional Medical Conduct Reform Act of
21 1989."

1 basis for disciplinary action by the board, the information shall
2 remain confidential.

3 (cf: P.L.1983, c.248, s.3)

4 16. (New section) a. The State Board of Medical Examiners
5 shall increase the licensing fee of physicians, chiropractors, and
6 podiatrists in an amount sufficient to fund the costs of
7 establishing and operating the Medical Practitioner Review Panel
8 and the positions of medical director and investigative staff for
9 the medical director, established pursuant to P.L. .
10 c. (C.) (now pending before the Legislature as this bill).

11 b. The board shall establish a reduced licensing fee for
12 physicians, chiropractors and podiatrists who are 65 years of age
13 or older and who have no affiliation status with a licensed health
14 care facility or a health maintenance organization.

15 17. The State Board of Medical Examiners shall, pursuant to
16 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
17 et seq.), adopt rules and regulations necessary to carry out the
18 provisions of this act.

19 18. This act shall take effect immediately, except that
20 sections 2, 4, 8, 9 and 10 shall take effect on the 180th day
21 following enactment.

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STATEMENT

25 This bill, known as the "Professional Medical Conduct Reform
26 Act of 1988," makes significant changes in the current laws and
27 practices regarding the reporting and disciplining of physicians,
28 chiropractors and podiatrists who are impaired or incompetent.

29 The purpose of this reform legislation is to ensure that the
30 public is protected from those health care practitioners who pose
31 a danger to the health, safety or life of their patients. The
32 provisions of this bill govern the health care practitioners, i.e.,
33 physicians, chiropractors and podiatrists, who are regulated by
34 the State Board of Medical Examiners.

35 This bill closes loopholes in and strengthens the reporting
36 requirements of health care facilities and health maintenance
37 organizations (HMOs), medical malpractice insurers, and health
38 care practitioners, themselves. Specifically, the bill amends
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1 section 1 of P.L.1983, c.247 (C.26:2H-12.2) to require a health
care facility or HMO to notify the Medical Practitioner Review
3 Panel (established in this bill) within seven days if a practitioner,
that is, a physician, medical resident or intern, chiropractor, or
5 podiatrist voluntarily or involuntarily has a temporary or
permanent reduction or suspension of privileges, resigns, is
7 terminated or takes a leave of absence from the medical staff.
The facility is also required to notify the review panel if a
9 practitioner becomes the subject of a complaint or disciplinary
proceeding or action which is based on information which
11 reasonably indicates that the practitioner engaged in any
conduct, used any drugs or alcohol, or suffered from any physical
13 or mental condition which may have jeopardized or improperly
risky the health, safety or life of a patient, or violated any
15 provision of Title 45 of the Revised Statutes, which governs the
practice of medicine, chiropractic and podiatry.

17 The bill also amends section 2 of P.L.1983, c.247 (C.17:30D-17)
to require medical malpractice insurers and practitioners who are
19 not covered by an insurer to report all medical malpractice
settlements, judgments and arbitration awards involving a
21 practitioner, regardless of the dollar amount, to the review
panel. The bill also requires medical malpractice insurers to
23 notify the review panel of any termination or denial of coverage
to a practitioner, or surcharge assessed on account of the
25 practitioner's practice method or medical malpractice claims
history.

27 Medical malpractice insurers and physicians not covered by an
insurer currently are required to report any claim settlement,
29 judgment or arbitration award for over \$25,000 to the State
Board of Medical Examiners. While this statute has been
31 effective in identifying the larger malpractice settlements,
judgments and awards, the State board is not notified of smaller
33 settlements, even when a single physician may have had multiple
settlements, judgments or awards decided against him. Also, the
35 State board is not currently notified when a malpractice insurer
terminates or denies coverage to a physician on account of that
37 practitioner's practice method or malpractice claims history.

This bill also requires a practitioner to promptly report another
39 practitioner to the State Board of Medical Examiners when the

1 practitioner is in possession of information which reasonably
3 indicates that another practitioner has demonstrated an
5 impairment, gross incompetence or unprofessional conduct which
7 would present an imminent danger to an individual patient or the
9 public health, safety or welfare.

11 While increased reporting of impaired and incompetent
13 practitioners is essential, in order to ensure that appropriate and
15 prompt action is taken against these practitioners, it is also
17 necessary to strengthen the State's current system for receiving
19 and investigating reports and complaints against practitioners.
21 Accordingly, this bill expands the staff of the State Board of
23 Medical Examiners by establishing the full-time position of
25 medical director and providing that the board staff shall include
27 two full-time investigators. The bill also increases the per diem
29 rate of reimbursement for State board members to \$150. Also, in
31 order to strengthen the composition of the State board, the bill
33 expands the membership to include the Commissioner of Health.

35 Additionally, the bill establishes a Medical Practitioner Review
37 Panel. The review panel will have nine members, eight of whom
39 will be appointed by the Governor with the advice and consent of
41 the Senate, and include four physicians, three consumers of
43 health care services and one administrator of a hospital. The
45 ninth member shall be member of the State board, appointed by
47 the president of the State board. The purpose of the review panel
49 is to conduct a preliminary investigation of all reports and
51 complaints against practitioners made by health care facilities
53 and HMOs, medical malpractice insurers and the public. If, after
55 investigating the report or complaint, the review panel
57 determines that disciplinary action by the State Board of Medical
59 Examiners may be warranted, the review panel is directed to
61 refer the case to the State board. The review panel is also
63 authorized to refer an impaired practitioner to an approved
65 treatment program, when appropriate.

67 This preliminary investigatory process will effectively identify
69 those practitioners who pose a danger to the public and will
71 enable the State board to act promptly in taking disciplinary
73 action against impaired or incompetent practitioners.

75 Finally, in accordance with current State practice that
77 professional licensing boards financially support their activities
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1 through licensing fees. the bill directs the State Board of Medical
2 Examiners to raise the licensing fees of practitioners in an
3 amount sufficient to fund the costs of the new State board
4 positions and Medical Practitioner Review Panel.
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7 **HEALTH**
8 **Regulated Professions**

9 Designated the "Professional Medical Conduct Reform Act of
10 1988."
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SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2936

STATE OF NEW JERSEY

DATED: MAY 22, 1989

The Senate Institutions, Health and Welfare Committee favorably reports a Senate Committee Substitute for Senate Bill No. 2936.

This substitute, known as the "Professional Medical Conduct Reform Act of 1989," makes significant changes in the current laws and practices regarding the reporting and disciplining of physicians, chiropractors and podiatrists who are impaired or incompetent. This substitute closes loopholes in, and strengthens the reporting requirements of, health care facilities and health maintenance organizations (HMOs), medical malpractice insurers, and health care practitioners, themselves.

Specifically, the substitute amends section 1 of P.L.1983, c.247 (C.26:2H-12.2) to require a health care facility or HMO to notify the Medical Practitioner Review Panel (established in this substitute) within seven days if a practitioner (i.e., a physician, medical resident or intern, chiropractor, or podiatrist) who is employed by, under contract to render professional services to, or has privileges at that health care facility or HMO: voluntarily resigns from the staff of the facility or voluntarily relinquishes any partial privilege to perform a specific procedure if the facility is reviewing the practitioner's conduct or patient care; has full or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the practitioner's incompetency, misconduct or impairment; agrees to the placement of conditions or limitations on the exercise of clinical privileges or practice within the health care facility or HMO; is granted a leave of absence pursuant to which the practitioner may not exercise clinical privileges or practice within the health care facility or HMO if the reasons provided in support of the leave relate to any physical, mental or emotional condition or drug or alcohol use, which might impair the practitioner's ability to practice with reasonable skill and safety; or is a party to a medical malpractice liability suit, in which the health care facility or HMO is also a party, and in which there is a settlement, judgment

or arbitration award.

The substitute also amends section 2 of P.L.1983, c.247 (C.17:30D-17) to require in-State medical malpractice insurers and practitioners who are not covered by an in-State insurer to report all medical malpractice settlements, judgments and arbitration awards involving a practitioner, regardless of the dollar amount, to the review panel. The substitute also requires medical malpractice insurers to notify the review panel of any termination or denial of coverage to a practitioner, or surcharge assessed on account of the practitioner's practice method or medical malpractice claims history.

The substitute also requires a practitioner to promptly report another practitioner to the State Board of Medical Examiners (BME) when the practitioner is in possession of information which reasonably indicates that another practitioner has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or the public health, safety or welfare.

The substitute expands the staff of the BME by establishing the full-time position of medical director and providing that the medical director shall have investigative, medical consulting and administrative and clerical staff provided by the Division of Consumer Affairs. The substitute also increases the per diem rate of reimbursement for BME members to \$150. Also, in order to strengthen the composition of the BME, the substitute expands the membership to include the Commissioner of Health.

Additionally, the substitute establishes a Medical Practitioner Review Panel within the BME. The review panel will have nine members, eight of whom will be appointed by the Governor with the advice and consent of the Senate, and include four physicians, three consumers of health care services and one administrator of a hospital. The ninth member shall be member of the BME, appointed by the president of the BME. The purpose of the review panel is to conduct a preliminary investigation of all reports and complaints against practitioners made by health care facilities and HMOs, medical malpractice insurers and the public. If, after investigating the report or complaint, the review panel determines that disciplinary action by the BME may be warranted, the review panel is directed to refer the case to the BME. The review panel is also authorized to refer an impaired practitioner to an approved treatment program, when appropriate.

The substitute authorizes the BME to establish regulations for

issuing permits and defining the scope of practice for medical residents and interns and other persons in training for their licensed profession, and provides that the BME shall notify all health care facilities, HMOs and private practitioners with which a practitioner is affiliated, when that practitioner has become subject to disciplinary action by the BME.

The substitute also establishes the practicing of medicine, podiatry or chiropractic without a license, as a third degree crime and the destroying, altering or falsifying of any patient record with the intent to deceive or mislead any person as to information about the patient, as a fourth degree crime. Also, the substitute provides that any physician or podiatrist whose federal or State privilege to purchase, dispense or prescribe controlled substances has been revoked, suspended or otherwise limited, shall not be permitted to administer controlled substances in a health care facility or HMO unless the administration has been approved by the BME.

The substitute amends R.S.45:9-16 to raise the legal standard for revoking or suspending a practitioner's license from "proof to the satisfaction of the board" (or preponderance of the evidence), to "clear and convincing evidence." It also amends N.J.S.2C:43-12, concerning pretrial intervention programs, to provide that the program director shall notify the BME when a practitioner is enrolled in the program after he has been charged with an offense involving drugs or alcohol. N.J.S.2C:52-2, concerning expungement of criminal records, is amended to provide that the court shall notify the BME when a practitioner who has been convicted of an offense involving drugs or alcohol, petitions the court for an expungement of the conviction and the records pertaining thereto. Finally, the bill amends section 1 of P.L.1979, c.128 (C.2A:84A-22.10), concerning immunity of professional review committees, to provide that the immunity extends to any staff member or other person who supplies information to that body regarding the competence or professional conduct of a physician and other health care providers and to specify that such committees of health maintenance organizations (as well as those of hospitals, long-term health care facilities and professional associations and societies), are included under the immunity provisions.

In accordance with current State practice that professional licensing boards financially support their activities through licensing fees, the substitute directs the BME to raise the licensing fees of practitioners in an amount sufficient to fund the costs of the new BME positions and Medical Practitioner Review Panel.

ASSEMBLY HIGHER EDUCATION AND REGULATED
PROFESSIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2936

with committee amendments

STATE OF NEW JERSEY

DATED: December 4, 1989

The Assembly Higher Education and Regulated Professions Committee favorably reports the Senate Committee Substitute for Senate Bill No. 2936 with amendments.

As amended by committee, S-2936 SCS, known as the "Professional Medical Conduct Reform Act of 1989," makes significant changes in the current laws and practices regarding the reporting and disciplining of physicians and podiatrists who are impaired or incompetent. The bill closes loopholes in, and strengthens the reporting requirements of, health care facilities and health maintenance organizations (HMOs), medical malpractice insurers, and health care practitioners themselves.

Specifically, the bill amends section 1 of P.L.1983, c.247 (C.26:2H-12.2) to require a health care facility or HMO to notify the Medical Practitioner Review Panel (established in the bill) within seven days if a practitioner (i.e., a physician, medical resident or intern, or podiatrist) who is employed by, under contract to render professional services to, or has privileges at that health care facility or HMO: voluntarily resigns from the staff of the facility or voluntarily relinquishes any partial privilege to perform a specific procedure if the facility is reviewing the practitioner's conduct or patient care; has full or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the practitioner's incompetency, misconduct or impairment; agrees to the placement of conditions or limitations on the exercise of clinical privileges or practice within the health care facility or HMO; is granted a leave of absence pursuant to which the practitioner may not exercise clinical privileges or practice within the health care facility or HMO if the reasons provided in support of the leave relate to any physical, mental or emotional condition or drug or alcohol use, which might impair the practitioner's ability to practice with reasonable skill and safety; or is a party to a medical malpractice

liability suit, in which the health care facility or HMO is also a party, and in which there is a settlement, judgment or arbitration award.

The bill also amends section 2 of P.L.1983, c.247 (C.17:30D-17) to require in-State medical malpractice insurers and practitioners who are not covered by an in-State insurer to report all medical malpractice settlements, judgments and arbitration awards involving a practitioner, regardless of the dollar amount, to the review panel. The bill also requires medical malpractice insurers to notify the review panel of any termination or denial of coverage to a practitioner, or surcharge assessed on account of the practitioner's practice method or medical malpractice claims history.

The bill also requires a practitioner to promptly report another practitioner to the State Board of Medical Examiners (BME) when the practitioner is in possession of information which reasonably indicates that another practitioner has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or the public health, safety or welfare.

The bill expands the staff of the BME by establishing the full-time position of medical director and providing that the medical director shall have investigative, medical consulting and administrative and clerical staff provided by the Division of Consumer Affairs. The bill also increases the per diem rate of reimbursement for BME members to \$150. Also, in order to strengthen the composition of the BME, the bill expands the membership to include the Commissioner of Health.

Additionally, the bill establishes a Medical Practitioner Review Panel within the BME. The review panel will have nine members, eight of whom will be appointed by the Governor with the advice and consent of the Senate, and include four physicians, three consumers of health care services and one administrator of a hospital. The ninth member shall be a member of the BME, appointed by the president of the BME. The purpose of the review panel is to conduct a preliminary investigation of all reports and complaints against practitioners made by health care facilities and HMOs, medical malpractice insurers and the public. If, after investigating the report or complaint, the review panel determines that disciplinary action by the BME may be warranted, the review panel is directed to refer the case to the BME. The review panel is also authorized to refer an impaired practitioner to an approved treatment program, when appropriate.

The bill authorizes the BME to establish regulations for

issuing permits and defining the scope of practice for medical residents and interns and other persons in training for their licensed profession, and provides that the BME shall notify all health care facilities, HMOs and private practitioners with which a practitioner is affiliated, when that practitioner has become subject to disciplinary action by the BME.

The bill also establishes the practicing of medicine or podiatry without a license, as a third degree crime and the destroying, altering or falsifying of any patient record with the intent to deceive or mislead any person as to information about the patient, as a fourth degree crime. Also, the bill provides that any physician or podiatrist whose federal or State privilege to purchase, dispense or prescribe controlled substances has been revoked, suspended or otherwise limited, shall not be permitted to administer controlled substances in a health care facility or HMO unless the administration has been approved by the BME.

The bill amends R.S.45:9-16 to raise the legal standard for revoking or suspending a practitioner's license from "proof to the satisfaction of the board" (or preponderance of the evidence), to "clear and convincing evidence." It also amends N.J.S.2C:43-12, concerning pretrial intervention programs, to provide that the program director shall notify the BME when a practitioner is enrolled in the program after he has been charged with an offense involving drugs or alcohol. N.J.S.2C:52-2, concerning expungement of criminal records, is amended to provide that the court shall notify the BME when a practitioner who has been convicted of an offense involving drugs or alcohol, petitions the court for an expungement of the conviction and the records pertaining thereto. Finally, the bill amends section 1 of P.L.1979, c.128 (C.2A:84A-22.10), concerning immunity of professional review committees, to provide that the immunity extends to any staff member or other person who supplies information to that body regarding the competence or professional conduct of a physician and other health care providers and to specify that such committees of health maintenance organizations (as well as those of hospitals, long-term health care facilities and professional associations and societies), are included under the immunity provisions.

In accordance with current State practice that professional licensing boards financially support their activities through licensing fees, the bill directs the BME to raise the licensing fees of practitioners in an amount sufficient to fund the costs of the new BME positions and Medical Practitioner Review Panel.

The committee amended the bill to exclude chiropractors from its provisions. Pursuant to P.L. 1989, c. 153 which was approved on August 11, 1989, as of February, 1990 chiropractors will no longer be regulated by the State Board of Medical Examiners but rather by an independent State Board of Chiropractic Examiners. The committee amendments also update sections of law which have been amended since the bill was originally drafted and make a variety of technical amendments.

SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2936

STATE OF NEW JERSEY

DATED: MAY 22, 1989

The Senate Institutions, Health and Welfare Committee favorably reports a Senate Committee Substitute for Senate Bill No. 2936.

This substitute, known as the "Professional Medical Conduct Reform Act of 1989," makes significant changes in the current laws and practices regarding the reporting and disciplining of physicians, chiropractors and podiatrists who are impaired or incompetent. This substitute closes loopholes in, and strengthens the reporting requirements of, health care facilities and health maintenance organizations (HMOs), medical malpractice insurers, and health care practitioners, themselves.

Specifically, the substitute amends section 1 of P.L.1983, c.247 (C.26:2H-12.2) to require a health care facility or HMO to notify the Medical Practitioner Review Panel (established in this substitute) within seven days if a practitioner (i.e., a physician, medical resident or intern, chiropractor, or podiatrist) who is employed by, under contract to render professional services to, or has privileges at that health care facility or HMO: voluntarily resigns from the staff of the facility or voluntarily relinquishes any partial privilege to perform a specific procedure if the facility is reviewing the practitioner's conduct or patient care; has full or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the practitioner's incompetency, misconduct or impairment; agrees to the placement of conditions or limitations on the exercise of clinical privileges or practice within the health care facility or HMO; is granted a leave of absence pursuant to which the practitioner may not exercise clinical privileges or practice within the health care facility or HMO if the reasons provided in support of the leave relate to any physical, mental or emotional condition or drug or alcohol use, which might impair the practitioner's ability to practice with reasonable skill and safety; or is a party to a medical malpractice liability suit, in which the health care facility or HMO is also a party, and in which there is a settlement, judgment

or arbitration award.

The substitute also amends section 2 of P.L.1983, c.247 (C.17:30D-17) to require in-State medical malpractice insurers and practitioners who are not covered by an in-State insurer to report all medical malpractice settlements, judgments and arbitration awards involving a practitioner, regardless of the dollar amount, to the review panel. The substitute also requires medical malpractice insurers to notify the review panel of any termination or denial of coverage to a practitioner, or surcharge assessed on account of the practitioner's practice method or medical malpractice claims history.

The substitute also requires a practitioner to promptly report another practitioner to the State Board of Medical Examiners (BME) when the practitioner is in possession of information which reasonably indicates that another practitioner has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or the public health, safety or welfare.

The substitute expands the staff of the BME by establishing the full-time position of medical director and providing that the medical director shall have investigative, medical consulting and administrative and clerical staff provided by the Division of Consumer Affairs. The substitute also increases the per diem rate of reimbursement for BME members to \$150. Also, in order to strengthen the composition of the BME, the substitute expands the membership to include the Commissioner of Health.

Additionally, the substitute establishes a Medical Practitioner Review Panel within the BME. The review panel will have nine members, eight of whom will be appointed by the Governor with the advice and consent of the Senate, and include four physicians, three consumers of health care services and one administrator of a hospital. The ninth member shall be member of the BME, appointed by the president of the BME. The purpose of the review panel is to conduct a preliminary investigation of all reports and complaints against practitioners made by health care facilities and HMOs, medical malpractice insurers and the public. If, after investigating the report or complaint, the review panel determines that disciplinary action by the BME may be warranted, the review panel is directed to refer the case to the BME. The review panel is also authorized to refer an impaired practitioner to an approved treatment program, when appropriate.

The substitute authorizes the BME to establish regulations for

issuing permits and defining the scope of practice for medical residents and interns and other persons in training for their licensed profession, and provides that the BME shall notify all health care facilities, HMOs and private practitioners with which a practitioner is affiliated, when that practitioner has become subject to disciplinary action by the BME.

The substitute also establishes the practicing of medicine, podiatry or chiropractic without a license, as a third degree crime and the destroying, altering or falsifying of any patient record with the intent to deceive or mislead any person as to information about the patient, as a fourth degree crime. Also, the substitute provides that any physician or podiatrist whose federal or State privilege to purchase, dispense or prescribe controlled substances has been revoked, suspended or otherwise limited, shall not be permitted to administer controlled substances in a health care facility or HMO unless the administration has been approved by the BME.

The substitute amends R.S.45:9-16 to raise the legal standard for revoking or suspending a practitioner's license from "proof to the satisfaction of the board" (or preponderance of the evidence), to "clear and convincing evidence." It also amends N.J.S.2C:43-12, concerning pretrial intervention programs, to provide that the program director shall notify the BME when a practitioner is enrolled in the program after he has been charged with an offense involving drugs or alcohol. N.J.S.2C:52-2, concerning expungement of criminal records, is amended to provide that the court shall notify the BME when a practitioner who has been convicted of an offense involving drugs or alcohol, petitions the court for an expungement of the conviction and the records pertaining thereto. Finally, the bill amends section 1 of P.L.1979, c.128 (C.2A:84A-22.10), concerning immunity of professional review committees, to provide that the immunity extends to any staff member or other person who supplies information to that body regarding the competence or professional conduct of a physician and other health care providers and to specify that such committees of health maintenance organizations (as well as those of hospitals, long-term health care facilities and professional associations and societies), are included under the immunity provisions.

In accordance with current State practice that professional licensing boards financially support their activities through licensing fees, the substitute directs the BME to raise the licensing fees of practitioners in an amount sufficient to fund the costs of the new BME positions and Medical Practitioner Review Panel.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 8, 1990

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2936

(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Committee Substitute for Senate Bill No. 2936 (First Reprint) with my objections, for reconsideration.

This bill, known as the Professional Medical Conduct Reform Act of 1989, makes significant changes in the current laws and practices regarding the reporting and disciplining of physicians and podiatrists who are impaired or incompetent. This bill was introduced to address the concerns raised by the October 1987 Report of the State Commission of Investigation on Impaired and Incompetent Physicians.

The bill establishes numerous, well-conceived and noteworthy reforms to the current statutory and regulatory procedures regarding impaired or incompetent physicians and podiatrists. The bill clarifies when the Board of Medical Examiners must be notified of potential impairment by health care facilities, insurance carriers and health care practitioners themselves. The bill provides needed resources to the Board of Medical Examiners in the form of a full-time Medical Director and the creation of a Medical Practitioner Review Panel. It also creates new criminal penalties for practicing medicine without a license or exceeding the scope of permitted practice or falsifying patient records. These are but a few of the many welcome reforms contained in this bill to achieve a healthy and proficient pool of physicians and podiatrists in this State.

I am, however, troubled by two aspects of the bill. First, this bill heightens the standard of proof that the State must meet in disciplinary proceedings. Currently, the State needs to prove physician misconduct, incompetence or impairment by the preponderance of the evidence. This legislation requires proof by clear and convincing evidence, a higher standard of proof that will make it more difficult for the State to take action in these cases. I am content that the public health is best protected by the current

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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statutory standard of proof and recommend that the current law remain unchanged in this respect.

My second concern rests with the functioning of the Medical Practitioner Review Panel to be established by this bill. This Review Panel is to be composed of nine members, eight of whom will be appointed by the Governor with the advice and consent of the Senate, and will include four physicians, three consumers of health care services and one hospital administrator. The ninth member will be a member of the Board of Medical Examiners appointed by the President of that Board. The Review Panel is to conduct a preliminary investigation of all reports and complaints made against practitioners by health care facilities and health maintenance organizations, medical malpractice insurers and the public. I am encouraged by the prospect that this Review Panel will enhance the efficiency of the Board in investigating physicians who may be impaired or incompetent.

However, this goal can only be accomplished if the Panel is recommendatory in nature and does not intrude on the Board's authority to protect the public as it might under certain provisions of this bill. For example, the bill currently provides that the Review Panel will make initial determinations and dispositions of complaints charging practitioners with incompetence or impairment. During the informal hearing process administered by the Review Panel under the bill, the Board is not entitled to take jurisdiction over a case even if it believes that a physician is creating a serious risk to the public health. Because the Board must be fully capable of addressing disabled physicians who represent an imminent danger to their patients, I believe that the Board should have the necessary authority to remove a matter from consideration by the Review Panel in these circumstances.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 2936 (First Reprint) and recommend that it be amended as follows:

Page 7, Section 6, Line 13: After "its" DELETE "dispositions"
INSERT "recommendations"

Page 9, Section 8c, Line 16: After "not" DELETE "take" and INSERT "make"
After "any" DELETE "action" INSERT "recommendation"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 9, Section 9a, Line 38: DELETE "(3)" INSERT "b. The review panel may receive referrals from the board which may include" DELETE "Complaints" INSERT "complaints"

Page 10, Section 9b, Line 2: DELETE "b" INSERT "c"

Page 10, Section 9b, Lines 5-6: DELETE "determine the appropriate disposition" INSERT "make a recommendation to the board"

Page 10, Section 9b, Line 8: DELETE "determination" INSERT "recommendation"

Page 10, Section 9b(2), Lines 30-31: DELETE "The practitioner shall be entitled to have an informal hearing" INSERT "At the panel's request or upon a good cause showing by the practitioner an informal hearing shall be scheduled"

Page 10, Section 9b(2), Lines 33-35: After "board" DELETE ", to present any information the practitioner deems appropriate to the investigation, except as provided in paragraph (3) of this subsection"

Page 11, Section 9b(3), Line 1: After "board" DELETE "is actively conducting" INSERT "determines to conduct"

Page 11, Section 9b(3), Lines 2-3: After "practitioner" DELETE "which began prior to the review panel's investigation of that practitioner" INSERT "who it has reasonable cause to believe represents an imminent danger to his patients"

Page 11, Section 9b(3), Lines 6-7: After "without" DELETE "effecting a disposition" INSERT "making a recommendation"

Page 11, Section 9b(3), Line 7: After "subsection" DELETE "c." INSERT "d."

Page 11, Section 9c, Line 8: INSERT new section "c. 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."

Page 11, Section 9b, 3c, Line 8: DELETE "c." INSERT "d." DELETE "On the basis of written findings of fact" INSERT "Upon completion of its review"

Page 11, Section 9b, 3c, Line 9: DELETE "effect" INSERT "prepare a report recommending"

Page 11, Section 9c(4), Lines 27-29: DELETE in entirety

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Page 11, Section 9d, Lines 30-33: DELETE in entirety

Page 11, Section 9f, Line 39: After "panel." INSERT "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."

Page 12, Section 10b, Line 18: After "all" DELETE "actions taken" INSERT "recommendations made"

Page 15, Section 18, Line 10: DELETE "clear and convincing" INSERT "a showing of the preponderance of the credible"

Page 18, Section 20, Lines 30-31: DELETE "clear and convincing" INSERT "a showing of the preponderance of the credible"

Page 20, Section 20, Line 20: DELETE "clear and convincing" INSERT "a showing of the preponderance of the credible"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Deborah T. Poritz

Chief Counsel