

26:2H-12.2

LEGISLATIVE HISTORY CHECKLIST

NJSA: 26:2H-12.2; 17:30D-17

(Physicians, health care facilities,
insurance companies — disciplinary
proceedings and malpractice
judgments - reporting requirements)

LAWS OF: 1983

CHAPTER: 247

Bill No: A784

Sponsor(s): Markert and others

Date Introduced: Feb. 22, 1982

Committee: Assembly: Higher Education and Regulated Professions

Senate: Labor, Industry and Professions

Amended during passage: Yes

/// Amendments denoted by asterisks.
Substituted for S1009.

according to Governor's recommendations:

Date of Passage: Assembly: March 15, 1982

Re-enacted 5-5-83

Senate: Feb. 9, 1983

Re-enacted ~~6-30-83~~

Date of Approval: July 7, 1983

Following statements are attached if available:

Sponsor statement:

Yes

// Also attached: Senate
amendments, adopted
1-27-83 (with statement)

Committee statement:

Assembly

Yes

//

Senate

Yes

//

Fiscal Note:

///

No

Veto Message:

Yes

//

Message on Signing:

///

No

Following were printed:

Reports:

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No

Hearings:

///

No

See newspaper clipping - attached

(over)

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Series of articles referred to in clipping: Bergen Record - 4-26, 4-27, 4-28, 4-30 & 5-21-81, by Ted Rohlich. See news clipping file in New Jersey Reference Department, "N.J. - Physicians - 1981"

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 784

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1982

By Assemblyman MARKERT, Assemblywoman WRIGHT, Assemblymen KOSCO, SCHUBER, FRANKS, KERN, KAVANAUGH, ALBOHN, BARRY, CHINNICI, PALAIA, WOLF, HENDRICKSON, BRYANT, KELLY, GILL, ROCCO, Assemblywoman OGDEN, Assemblymen HAYTAIAN, HOLLENBECK, VISOTCKY, BROWN, LESNIAK, PELLECCIA, ZANGARI, COWAN, Assemblywoman MUHLER and Assemblyman T. GALLO

Referred to Committee on Higher Education and Regulated Professions

AN ACT concerning the reporting of certain information to the State Board of Medical Examiners.

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

1 1. A health care facility licensed pursuant to section 12 of P. L.
2 1971, c. 136 (C. 26:2H-12) shall notify the State Board of Medical
3 Examiners in writing of:

4 a. ***[Any]** ******[The results of any]** ****** Any****** disci-
5 plinary proceeding ******or action taken****** **[Or action taken]***
6 ***by the governing body*** against any physician or surgeon licensed
7 by the board ***when the proceeding****or action**** results in a**
7A **physician's or surgeon's reduction or suspension of privileges or**
7B **removal****or resignation**** from the medical staff***, and pro-
7C vide such other information relating to the proceeding or action
7D as may be requested by the board; and

8 b. Any medical malpractice liability insurance claim settlement,

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted March 8, 1982.**

****—Senate committee amendments adopted December 6, 1982.**

*****—Senate amendment adopted January 27, 1983.**

******—Assembly amendments adopted in accordance with Governor's recommendations April 25, 1983.**

9 judgment or arbitration award to which the health care facility
10 is a party.

11 The form of notification shall be prescribed by the Commissioner
12 of Health, ****[and]**** shall contain such information as may
13 be required by the board ****and shall be made within 30 days
13A of the proceeding or action, request, settlement, judgment or
13B award****.

14 A health care facility which fails to provide such notice or shall
15 fail to cooperate with *[any]* **such** request for information by
16 the board, shall be subject to such penalties as the State Depart-
17 ment of Health may determine pursuant to section 13 of P. L. 1971,
18 c. 136 (C. 26:2H-13).

1 2. Any insurer or insurance association authorized to issue
2 medical malpractice liability insurance in the State, shall
3 ****[forthwith]**** notify the State Board of Medical Examiners
4 in writing of any medical malpractice claim settlement, judgment
5 or arbitration award for over **[\$10,000.00]** **\$25,000.00**,
6 involving any physician or surgeon licensed by the board and in-
7 sured by the insurer or insurance association. *****Any physician*
8 *or surgeon licensed by the board who is not covered by medical*
9 *malpractice liability insurance shall notify the board in writing of*
10 *any medical malpractice judgment or arbitration award for over*
11 *\$25,000.00, to which the physician or surgeon is a party.***** *****The*
12 *board shall not presume that the settlement, judgment or award is*
13 *conclusive evidence in any disciplinary proceeding.**** The form of
14 notification shall be prescribed by the Commissioner of Insurance,
15 ****[and]**** shall contain such information as may be required
16 by the board ****and shall be made within 30 days of the settle-
17 ment, judgment or award****. ***An insurer or insurance associa-*
18 *tion shall be immune from liability for furnishing information to*
19 *the board in fulfillment of the requirements of this section.***

1 3. This act shall take effect immediately but shall remain in-
2 operative for 45 days following enactment.

ASSEMBLY, No. 784

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1982

By Assemblyman MARKERT, Assemblywoman WRIGHT, Assemblymen KOSCO, SCHUBER, FRANKS, KERN, KAVANAUGH, ALBOHN, BARRY, CHINNICI, PALAIA, WOLF, HENDRICKSON, BRYANT, KELLY, GILL, ROCCO, Assemblywoman OGDEN, Assemblymen HAYTAIAN, HOLLENBECK, VISOTCKY, BROWN, LESNIAK, PELLECCIA, ZANGARI, COWAN, Assemblywoman MUHLER and Assemblyman T. GALLO

Referred to Committee on Higher Education and
Regulated Professions

AN ACT concerning the reporting of certain information to the
State Board of Medical Examiners.

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

1 1. A health care facility licensed pursuant to section 12 of P. L.
2 1971, c. 136 (C. 26:2H-12) shall notify the State Board of Medical
3 Examiners in writing of:

4 a. Any disciplinary proceeding or action taken against any
5 physician or surgeon licensed by the board, and provide such other
6 information relating to the proceeding or action as may be re-
7 quested by the board; and

8 b. Any medical malpractice liability insurance claim settlement,
9 judgment or arbitration award to which the health care facility
10 is a party.

11 The form of notification shall be prescribed by the Commissioner
12 of Health, and shall contain such information as may be required
13 by the board.

14 A health care facility which fails to provide such notice or shall
15 fail to cooperate with any request for information by the board,

16 shall be subject to such penalties as the State Department of Health
17 may determine pursuant to section 13 of P. L. 1971, c. 136 (C.
18 26:2H-13).

1 2. Any insurer or insurance association authorized to issue
2 medical malpractice liability insurance in the State, shall forth-
3 with notify the State Board of Medical Examiners in writing of
4 any medical malpractice claim settlement, judgment or arbitration
5 award for over \$10,000.00, involving any physician or surgeon
6 licensed by the board and insured by the insurer or insurance
7 association. The form of notification shall be prescribed by the
8 Commissioner of Insurance, and shall contain such information as
9 may be required by the board.

1 3. This act shall take effect immediately but shall remain in-
2 operative for 45 days following enactment.

STATEMENT

This bill requires :

a. A health care facility to report to the State Board of Medical Examiners (hereinafter referred to as the board) any disciplinary proceedings or action taken by the facility against a board licensed physician or surgeon, or any malpractice insurance settlement, judgment or arbitration award to which the facility is a party;

b. An insurer or insurance association to immediately notify the board in writing of any medical malpractice, claim settlement, judgment or arbitration award for over \$10,000.00, against any board licensed physician or surgeon insured by the insurer or association.

ASSEMBLY HIGHER EDUCATION AND REGULATED
PROFESSIONS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 784
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 1982

As amended by committee, this bill requires every health care facility licensed by the Department of Health to notify the State Board of Medical Examiners of:

1. The results of any disciplinary proceeding by the governing body against a physician or surgeon licensed by the board when it results in a physician's or surgeon's reduction or suspension of privileges or removal from the medical staff; and,
2. Any medical malpractice liability insurance award to which the facility is a party.

The bill also requires any insurer or insurance association to notify the board of any medical malpractice award of over \$10,000.00 against a board licensed physician or surgeon.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 784

[OFFICIAL COPY REPRINT]

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1982

This bill, as amended at the sponsor's request, requires every health care facility licensed by the Department of Health to notify the State Board of Medical Examiners of:

- a. The results of any disciplinary proceeding by the governing body of the facility against a physician or surgeon licensed by the board if it results in a physician's or surgeon's reduction or suspension of privileges or removal from the medical staff of the facility; and
- b. Any medical malpractice liability insurance claim settlement, judgment or arbitration award to which the facility is a party.

The bill also requires an insurer or insurance association to notify the board of any medical malpractice claim settlement, judgment or arbitration award for over \$25,000.00 against a physician or surgeon licensed by the board. An insurer or insurance association is immune from liability in regard to furnishing this information.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 25, 1983

ASSEMBLY BILL NO. 784 (2d OCR)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 784 with my recommendations for reconsideration.

This bill requires every State licensed health care facility (facility) to notify the State Board of Medical Examiners (Board) of: (1) the results of any disciplinary proceeding by the governing body of the facility against a physician or surgeon licensed by the Board if it results in a physician's or surgeon's reduction or suspension of privileges or removal from the medical staff of the facility; and (2) any medical malpractice liability insurance claim settlement, judgment or arbitration award to which the facility is a party. This bill also requires an insurer or insurance association to notify the Board of any medical malpractice claim settlement, judgment or arbitration award for over \$25,000.00, against any Board licensed physician or surgeon insured by the insurer or association; an insurer or insurance association is immune from liability for furnishing this information.

I fully agree with the intent and purpose of this bill, which is to eliminate the serious impact on the public of impaired, dishonest or incompetent health care professionals. However, despite its praiseworthy goal, this bill as written contains certain technical and substantive deficiencies, which, if cured, will further ensure that its intent and purpose are achieved.

As written, this bill does not provide a time limit or specify when the required notifications shall be made to the Board. If facilities or insurance companies choose to wait months before they notify the Board of a disciplinary proceeding claim settlement, judgement or arbitration award against a professional, certain medical practices which endanger the public health, safety and welfare may needlessly continue. To ensure that the required notifications will be put to maximum use in protecting the public health, all such required notifications should be made within thirty days of the specified event or request.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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As written, this bill provides that facilities shall only report a disciplinary proceeding "when the proceeding results in a physician's or surgeon's reduction or suspension of privileges or removal from the medical staff. . ."

Based on the experiences of the Board in reviewing past cases, it is more common for a facility to encourage and allow a "problem" professional to "resign" (under threat of removal if he or she refuses) than to actually suspend or expel the individual. Thus, this bill's present operative language may only encourage even greater use of that euphemism as a bargaining device - and would not provide much additional nor useful information to the Board, which would remain in ignorance of a potentially dangerous situation. Worse yet, the "problem" professional is free to apply to another facility which may unsuspectingly accept his or her candidacy since the application for privileges typically asks only about prior suspensions or removal of privileges. In fact, the facility ridding itself of the potentially unqualified professional by accepting a "resignation" will sometimes go so far as to promise in exchange that it will avoid disclosing the reason for the professional's departure to any new facility checking application credentials. Our keen interest in protecting the public health is not served by such defensive maneuvers carried out in fear of threatened litigation by the departing professional. The operative language of this bill should be broadened to require notification to the Board of all facility disciplinary actions as well as proceedings, and resignations resulting from such disciplinary actions.

Accordingly, I herewith return Assembly Bill No. 784 and recommend that it be amended as follows:

Page 1, Section 1, Line 4: delete "The results of any" and insert "Any";
after "proceeding" insert "or action taken"

Page 1, Section 1, Line 6: after "proceeding" insert "or action"

Page 1, Section 1, Line 7a: after "removal" insert "or resignation"

Page 1, Section 1, Line 12: delete "and"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 2, Section 1, Line 13: after "board" insert "and shall be made within thirty days of the proceeding or action, request, settlement, judgment or award"

Page 2, Section 2, Lines 2-3: delete "forthwith"

Page 2, Section 2, Line 7: after "association." insert "Any physician or surgeon licensed by the Board who is not covered by medical malpractice liability insurance shall notify the Board in writing of any medical malpractice judgment or arbitration award for over \$25,000.00, to which he or she is a party."

Page 2, Section 2, Line 8b: delete "and"

Page 2, Section 2, Line 9: after "board" insert ", and shall be made within thirty days of the settlement, judgment or award"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[Seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel

1/27/83

OK
VPL

ADOPTED
JAN 27 1983

Senate Amendments

to

Assembly Bill No. 784 (OCR) (Senate Reprint)

amend:

Page	Sec.	Line
2	2	7

After "." insert "The board shall not presume that the settlement, judgment or award is conclusive evidence in any disciplinary proceeding."

STATEMENT

This amendment provides that the Board of Medical Examiners shall not presume that any medical malpractice settlement, judgment or award reported by an insurance company is conclusive evidence in any disciplinary proceeding.

Bills aim at incompetent doctors

N.J. board would see more records

BC 2/14/82

Legislation that would require hospitals and malpractice insurance companies to report errant doctors to the state Board of Medical Examiners has been introduced by Assemblyman John W. Markert, a Westwood Republican.

Markert's bills, introduced last week, also would encourage, but not require, doctors to report colleagues they deemed dangerous. Doctors who reported suspicions of wrongdoing to the board would be granted immunity from civil suits filed by those whom they reported.

Markert said he had secured 30 sponsors for his proposals, which he said came about "as a result of reading a series of articles in *The Record*" last spring which detailed shortcomings in the state's medical disciplinary system.

The proposals are designed to combat secrecy that keeps some bad doctors from coming to the attention of the board, whose power to discipline physicians includes authority to suspend or revoke their licenses.

They follow on the heels of an unsuccessful campaign by former Attorney-General James Zazzali to secure even tougher reporting standards that would have required doctors themselves to re-

port errant colleagues and left those who failed to report open to disciplinary action.

Zazzali's efforts, which he, too, said were sparked by *The Record's* series, were embodied in draft legislation prepared last fall and submitted to former Gov. Brendan T. Byrne's office for review, but never introduced in the legislature.

Byrne's former counsel has said he deemed the legislation too controversial, despite a general endorsement by the Medical Society of New Jersey, for introduction at a late stage in the legislative session.

Before leaving office last month, Zazzali said he would "vigorously urge" his successor, Attorney-General Irwin Kimmelman, to embrace the proposals and begin a series of administrative changes to implement some of them.

Kimmelman has made no public comment on the matter as yet.

Markert's bills would require hospitals to notify the state Board of Medical Examiners whenever a doctor was the subject of any internal "disciplinary proceeding or action."

They also would require medical malpractice liability insurance carriers to notify the board of any claim settlement, judgment, or arbitration award of more than \$10,000.

And they would grant immunity from civil damages to any person who pro-

vided information to the board on the acts of a doctor, as long as the person had "reasonable cause to believe" that the doctor's actions violated the state's medical practice act.

"Under existing law," Markert said, "the threat of a civil damage suit and the privileged nature of physician-patient relations serve to discourage the reporting to the board of improper medical practices by board-licensed physicians or surgeons, thereby impairing the discharge of the board's statutory responsibilities under the Medical Practice Act."

One of Markert's objectives is already on the way to reality. Earlier this year, after speaking with Zazzali, Supreme Court Chief Justice Robert N. Wilentz agreed to order court clerks to report, for the first time, any malpractice judgments against board licensees. In the past, the board has heard of such judgments only in the extraordinary event that they were reported in the media.

NJ - Malpractice