

45:9-19.1 to 45:9-19.3

LEGISLATIVE HISTORY CHECKLIST

NJSA: 45:9-19.1 to 45:9-19.3 (Immunity from suits for reports made under Chapter 247)

LAWS OF: 1983

CHAPTER: 248

Bill No: A785

Sponsor(s): Markert and others

Date Introduced: February 22, 1982

Committee: Assembly: Higher Education & Regulated Professions

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments denoted by asterisks
Substituted for S1006

Date of Passage: Assembly: May 3, 1982 Re-enacted 5-5-83

Senate: February 9, 1983 Re-enacted 6-30-83

Date of Approval: July 7, 1983

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

~~See newspaper clipping - attached.~~

Series of articles referred to in clipping: Bergen Record 4-26, 4-27, 4-28, 4-30 & 5-2-81 by Ted Rohlick. See news clippings file in New Jersey Reference Department "N.J. - Physicians - 1981")

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ASSEMBLY, No. 785

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1982

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

Referred to Committee on Higher Education and
Regulated Professions

AN ACT concerning certain information provided to the State Board of Medical Examiners and supplementing Chapter 9 of Title 45 of the Revised Statutes.

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

1 1. A person ***[providing]*** **who in good faith and** without
2 malice **provides** to the State Board of Medical Examiners any
3 information concerning any act by a physician or surgeon licensed
4 by the board which the person has reasonable cause to believe
5 involves ****[conduct]**** ****repeated or gross misconduct**** that may
6 be subject to disciplinary action by the board, or any information
7 relating to such conduct requested by the board in the exercise of
8 its statutory responsibilities or which may be required by statute,
9 shall not be liable for civil damages in any cause of action arising
10 out of the provision of such information or services.

1 2. No privilege may be ****[.]**** asserted pursuant to P. L. 1968,
2 c. 185 (C. 2A:84A-22.1 et seq.), against any person providing in-

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.

3 formation to the State Board of Medical Examiners in accordance
4 with section 1 of this act.

1 3. In the event information is received by the State Board of
2 Medical Examiners concerning any matter relating to the same
3 parties and the same questions of law and fact involved in pending
4 criminal or civil proceedings, the board shall defer disciplinary
5 proceedings on such matter until final disposition of the criminal
6 or civil proceeding; except that if the board determines that there
7 is reasonable cause to believe that the continued medical practice
8 by the physician or surgeon involved in the criminal or civil pro-
9 ceeding would endanger the public health, safety or welfare, the
10 board may temporarily suspend the license of the physician or
11 surgeon pending final disposition of the criminal or civil proceeding
12 or any disciplinary proceeding by the board arising therefrom.

1 4. Any information concerning the conduct of a physician or
2 surgeon provided to the State Board of Medical Examiners pur-
3 suant to section 1 of this act or any other provision of law, shall
4 be of a confidential nature, pending final disposition of the inquiry
5 or investigation by the board.

1 5. This act shall take effect immediately.

1 3. In the event information is received by the State Board of
2 Medical Examiners concerning any matter relating to the same
3 parties and the same questions of law and fact involved in pending
4 criminal or civil proceedings, the board shall defer disciplinary
5 proceedings on such matter until final disposition of the criminal
6 or civil proceeding; except that if the board determines that there
7 is reasonable cause to believe that the continued medical practice
8 by the physician or surgeon involved in the criminal or civil pro-
9 ceeding would endanger the public health, safety or welfare, the
10 board may temporarily suspend the license of the physician or
11 surgeon pending final disposition of the criminal or civil proceeding
12 or any disciplinary proceeding by the board arising therefrom.

1 4. Any information concerning the conduct of a physician or
2 surgeon provided to the State Board of Medical Examiners pur-
3 suant to section 1 of this act or any other provision of law, shall
4 be of a confidential nature, pending final disposition of the inquiry
5 or investigation by the board.

1 5. This act shall take effect immediately.

STATEMENT

This bill grants immunity from civil damages to any person providing, without malice, information to the State Board of Medical Examiners involving any act of a physician or surgeon that the person has reasonable cause to believe violates the State's medical practice act. A physician, surgeon or other person may not invoke the privileged nature of physician-patient relations to prevent such information from being provided to the State board. Any information provided to the State board under the provisions of this bill shall be held in confidence by the board, pending final disposition of the board's inquiry or investigation.

Under existing law, 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.

A 785 (1983)

ASSEMBLY HIGHER EDUCATION AND REGULATED
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 785

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 1982

As amended by committee, this bill provides immunity to any person who in good faith and without malice provides information to the State Board of Medical Examiners concerning an act of a physician or surgeon which the person believes may violate the State medical practice act.

The bill also provides that no person may invoke the privileged nature of physician-patient relations to prevent information from being provided to the board; and that information supplied to the board shall be confidential pending final disposition of the board's investigation.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 785

[OFFICIAL COPY REPRINT]
with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1982

This bill provides immunity from civil damages to any person who in good faith and without malice provides, voluntarily or on request of the board, information to the State Board of Medical Examiners concerning the repeated or gross misconduct of a physician or surgeon which the person or the board, as the case may be, believes may violate the medical practice act.

The bill also provides that the patient-physician privilege cannot be asserted against any person providing such information to the board. Information supplied to the board is confidential pending final disposition of the board's investigation.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 25, 1963

ASSEMBLY BILL NO. 785 (2d OCR)

To the Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 785 with my recommendations for reconsideration.

This bill grants immunity from civil damages to any person who in good faith and without malice provides information to the State Board of Medical Examiners (Board), voluntarily or upon request, concerning the repeated or gross misconduct of a Board licensed physician or surgeon which the person or the Board has reasonable cause to believe violates the State medical practice act. This bill also provides that (1) a physician, surgeon, or other person may not invoke the physician-patient privilege to prevent such information from being provided to the Board; (2) in the event such information is received by the Board concerning any matter relating to the same parties and the same questions of law and fact involved in pending criminal or civil proceedings, the Board shall defer disciplinary proceedings on such matter until final disposition of the criminal or civil proceeding; and (3) any information supplied to the Board is confidential pending final disposition of its inquiry or investigation.

I fully agree with the intent and purpose of this bill, that is to recognize and eliminate the serious impact on the public of impaired, dishonest or incompetent health care professionals. 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 provides immunity only in cases of "repeated or gross" misconduct. Existing law (Professions and Occupations Regulated By State Boards of Registration and Examination N.J.S.A. 45:1 et seq.) renders licensees of all professional and occupational licensing boards (including the State Board of Medical Examiners) liable to disciplinary proceedings for a much broader class of conduct than that contained in this bill. Under N.J.S.A. 45:1-21 a licensee (such as a health care professional) who engages in dishonesty, fraud, deception, gross negligence, gross malpractice or repeated acts

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EXECUTIVE DEPARTMENT

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of negligence, malpractice or incompetence as well as professional misconduct may be disciplined. Furthermore, licensees who are incapable for medical or other good causes of discharging licensee functions or who have been convicted of moral turpitude or crimes relating adversely to licensing activity are also subject to Board action. If enacted in its present form, this bill would create the anomalous situation whereby a person reporting information for the narrow class of stated activity (gross or repeated misconduct) would be immunized, but a person disclosing fraudulent or deceptive conduct or conduct indicating incapacity (e.g. alcoholism or mental illness) would not enjoy the same immunity. In order to avoid such a result, the standard of "repeated or gross" misconduct should be broadened to include any misconduct.

I am concerned about the probable adverse impact of Section 3 of this bill. This section would paralyze the Board from conducting disciplinary proceedings until final disposition of any pending criminal or civil proceeding. Wholly apart from the technical questions of whether or when a criminal or civil proceeding is finally disposed of (i.e. is it at the time of settlement, after a jury verdict, or on the exhaustion of all state and federal appeals) and whether the parties' questions of law and fact are the same (questions which are of no small legal dimension), to require the Board to defer its proceeding usually for a period of years will effectively foreclose any disciplinary proceeding in the matter. Witnesses' recollections will fade, key witnesses will no longer be available and perhaps most importantly, the public's interest in effecting a cessation of improper licensee conduct is precluded. For example, if a physician were the subject of a criminal indictment or a civil action regarding medicaid or medicare fraud, the Board's disciplinary action would have to await the final outcome of that proceeding, which can pend for years. Also, it is possible that the mere presence of a criminal investigation or a grand jury inquiry would constitute a "criminal proceeding" within the meaning of Section 3 and, therefore, preclude disciplinary proceedings. Similarly, an egregious instance of malpractice, or misconduct (e.g. a sexual assault within the course of a medical examination or unnecessary or improperly performed surgery) simply by virtue of its pendency in civil or criminal litigation would bar proceedings by the Board. While it

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be true that this section allows for a temporary suspension of licensure where continued medical practice "would endanger the public health, safety or welfare", the present status of the law (which allows for parallel proceedings) protects both the public's interest as well as that of the individual licensee. Therefore, Section 3 should be deleted in its entirety.

Accordingly, I herewith return Assembly Bill No. 785 and recommend that it be amended as follows:

Page 1, Section 1, Line 5: delete "repeated or gross"

Page 2, Section 3, Lines 1-12: delete in entirety

Page 2, Section 4, Lines 1-2: delete "4." and insert "3."

Page 2, Section 5, Line 1: delete "5." and insert "4."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

{seal}

Attest:

By W. Cary Edwards
Chief Counsel