

45:1-3.3

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LAWS OF: 1999 **CHAPTER:** 403
NJSA: 45:1-3.3 (Professional licenses—revocation)

BILL NO: S1807 (Substituted for A3576)

SPONSOR(S): Cardinale

DATE INTRODUCED: May 6, 1999

COMMITTEE: **ASSEMBLY:** -----

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 10, 2000

SENATE: December 6, 1999

DATE OF APPROVAL: January 18, 2000

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL:](#) 2nd Reprint
(Amendments during passage denoted by superscript number)

S1807

[SPONSORS STATEMENT:](#) (Begins on page 11 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

[FLOOR AMENDMENT STATEMENTS:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

A3576

[SPONSORS STATEMENT:](#) (Begins on page 11 of original bill) [Yes](#)
Bill and Sponsors Statement identical to S1807

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)
Identical to Senate Statement for S1807

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

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No

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No

§4-C.45:1-3.3
§§5-7 -
C.45:1-7.1
to 45:1-7.3
§8 - C.45:1-15.1
§12 - Repealer

P.L. 1999, CHAPTER 403, *approved January 18, 2000*
Senate, No. 1807 (*Second Reprint*)

1 AN ACT concerning professional and occupational licensing boards
2 and revising parts of the statutory law.

3

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

6

7 1. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read as
8 follows:

9 2. The provisions of this act shall apply to the following boards and
10 all professions or occupations regulated by **[or]** , through **[such]** or
11 with the advice of those boards: the New Jersey State Board of
12 Accountancy, the New Jersey State Board of Architects, the New
13 Jersey State Board of Cosmetology and Hairstyling, the Board of
14 Examiners of Electrical Contractors, the New Jersey State Board of
15 Dentistry, the State Board of Mortuary Science of New Jersey, the
16 State Board of Professional Engineers and Land Surveyors, the State
17 Board of Marriage and Family Therapy Examiners, the State Board of
18 Medical Examiners, the New Jersey Board of Nursing, the New Jersey
19 State Board of Optometrists, the State Board of Examiners of
20 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of
21 Pharmacy, the State Board of Professional Planners, the State Board
22 of Psychological Examiners, the State Board of Examiners of Master
23 Plumbers, the State Board of Shorthand Reporting, the State Board of
24 Veterinary Medical Examiners, the Acupuncture Examining Board, the
25 State Board of Chiropractic Examiners, the State Board of Respiratory
26 Care, the State Real Estate Appraiser Board, **[and]** the State Board
27 of Social Work Examiners ¹, the State Board of Physical Therapy¹ ,
28 the Professional Counselor Examiners Committee, the New Jersey
29 Cemetery Board, the Orthotics and Prosthetics Board of Examiners,
30 the Occupational Therapy Advisory Council, the Electrologists
31 Advisory Committee, the Alcohol and Drug Counselor Committee, the
32 Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the
33 Home Inspection Advisory Committee, the Massage, Bodywork and
34 Somatic Therapy Examining Committee, and the Audiology and
35 Speech-Language Pathology Advisory Committee.
36 (cf: P.L.1995, c.366, s.23)

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 Senate SCM committee amendments adopted May 6, 1999.

² Senate floor amendments adopted November 15, 1999.

1 2. Section 8 of P.L. 1978, c. 73 (C.45:1-21) is amended to read as
2 follows:

3 8. A board may refuse to admit a person to an examination or may
4 refuse to issue or may suspend or revoke any certificate, registration
5 or license issued by the board upon proof that the applicant or holder
6 of such certificate, registration or license.

7 a. Has obtained a certificate, registration, license or authorization
8 to sit for an examination, as the case may be, through fraud, deception,
9 or misrepresentation;

10 b. Has engaged in the use or employment of dishonesty, fraud,
11 deception, misrepresentation, false promise or false pretense;

12 c. Has engaged in gross negligence, gross malpractice or gross
13 incompetence which damaged or endangered the life, health, welfare,
14 safety or property of any person;

15 d. Has engaged in repeated acts of negligence, malpractice or
16 incompetence;

17 e. Has engaged in professional or occupational misconduct as may
18 be determined by the board;

19 f. Has been convicted of , or engaged in acts constituting, any
20 crime or offense involving moral turpitude or **[any crime]** relating
21 adversely to the activity regulated by the board. For the purpose of
22 this subsection a judgment of conviction or a plea of guilty, non vult,
23 nolo contendere or any other such disposition of alleged criminal
24 activity shall be deemed a conviction;

25 g. Has had his authority to engage in the activity regulated by the
26 board revoked or suspended by any other state, agency or authority
27 for reasons consistent with this section;

28 h. Has violated or failed to comply with the provisions of any act
29 or regulation administered by the board;

30 i. Is incapable, for medical or any other good cause, of discharging
31 the functions of a licensee in a manner consistent with the public's
32 health, safety and welfare;

33 j. Has repeatedly failed to submit completed applications, or parts
34 of, or documentation submitted in conjunction with, such applications,
35 required to be filed with the Department of Environmental Protection;

36 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et
37 seq.) or any insurance fraud prevention law or act of another
38 jurisdiction or has been adjudicated, in civil or administrative
39 proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.) or
40 has been subject to a final order, entered in civil or administrative
41 proceedings, that imposed civil penalties under that act against the
42 applicant or holder;

43 l. Is presently engaged in drug or alcohol use that is likely to impair
44 the ability to practice the profession or occupation with reasonable
45 skill and safety. For purposes of this subsection, the term "presently"
46 means at this time or any time within the previous 365 days;

47 m. Has prescribed or dispensed controlled dangerous substances

1 indiscriminately or without good cause, or where the applicant or
2 holder knew or should have known that the substances were to be
3 used for unauthorized consumption or distribution:

4 n. Has permitted an unlicensed person or entity to perform an act
5 for which a license or certificate of registration or certification is
6 required by the board, or aided and abetted an unlicensed person or
7 entity in performing such an act:

8 o. Advertised fraudulently in any manner.

9 For purposes of this act:

10 "Completed application" means the submission of all of the
11 information designated on the checklist, adopted pursuant to section
12 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
13 permit for which application is made.

14 "Permit" has the same meaning as defined in section 1 of P.L.1991,
15 c.421 (C.13:1D-101).

16 (cf: P.L.1997, c.151, s.10)

17
18 3. Section 9 of P.L.1978, c.73 (C.45:1-22) is amended to read as
19 follows:

20 9. In addition or as an alternative, as the case may be, to revoking,
21 suspending or refusing to renew any license, registration or certificate
22 issued by it, a board may, after affording an opportunity to be heard:

23 a. Issue a letter of warning, reprimand, or censure with regard to
24 any act, conduct or practice which in the judgment of the board upon
25 consideration of all relevant facts and circumstances does not warrant
26 the initiation of formal action;

27 b. Assess civil penalties in accordance with this act;

28 c. Order that any person violating any provision of an act or
29 regulation administered by such board to cease and desist from future
30 violations thereof or to take such affirmative corrective action as may
31 be necessary with regard to any act or practice found unlawful by the
32 board;

33 d. Order any person found to have violated any provision of an act
34 or regulation administered by such board to restore to any person
35 aggrieved by an unlawful act or practice, any moneys or property, real
36 or personal, acquired by means of such act or practice; provided,
37 however, no board shall order restoration in a dollar amount greater
38 than those moneys received by a licensee or his agent or any other
39 person violating the act or regulation administered by the board;

40 e. Order any person, as a condition for continued, reinstated or
41 renewed licensure, to secure medical or such other professional
42 treatment as may be necessary to properly discharge licensee
43 functions.

44 A board may, upon a duly verified application of the Attorney
45 General **【alleging】** that either provides proof of a conviction of a court
46 of competent jurisdiction for a crime or offense involving moral
47 turpitude or relating adversely to the regulated profession or

1 occupation, or alleges an act or practice violating any provision of an
2 act or regulation administered by such board, enter a temporary order
3 suspending or limiting any license issued by the board pending plenary
4 hearing on an administrative complaint; provided, however, no such
5 temporary order shall be entered unless the application made to the
6 board palpably demonstrates a clear and imminent danger to the public
7 health, safety and welfare and notice of such application is given to the
8 licensee affected by such order.

9 In any administrative proceeding commenced on a complaint
10 alleging a violation of an act or regulation administered by a board,
11 such board may issue subpoenas to compel the attendance of witnesses
12 or the production of books, records, or documents at the hearing on
13 the complaint.

14 (cf: P.L.1978, c.73, s.9)

15

16 4. (New section) The Director of the Division of Consumer Affairs
17 may by rule establish, prescribe, or modify administrative fees charged
18 by boards in accordance with the "Administrative Procedure Act,"
19 P.L.1968, c.410 (C.52:14B-1 et seq.). For purposes of this section,
20 "administrative fees" are charges assessed to licensees, registrants or
21 holders of certificates, as the case may be, for board functions that are
22 not unique to a particular board but are uniform throughout all boards.
23 Administrative fees include, but are not limited to, fees for a duplicate
24 or replacement license, certification or registration, late renewal fee,
25 license reinstatement fee, and the fee for processing change of address.

26

27 5. (New section) a. Notwithstanding any other act or regulation
28 to the contrary, the provisions of this section and sections 6 and 7 of
29 P.L. , c. (C.) (now before the Legislature as this bill) shall apply
30 to every holder of a professional or occupational license or certificate
31 of registration or certification issued or renewed by a board specified
32 in section 2 of P.L. 1978, c.73 (P.L. 45:1-15), who seeks renewal of
33 that license or certificate.

34 b. Every holder of a professional or occupational license or
35 certificate of registration or certification, issued or renewed by a board
36 specified in section 2 of P.L.1978, c.73 (C.45:1-15), who seeks
37 renewal shall submit a renewal application and pay a renewal fee prior
38 to the date of expiration of the license or certificate of registration or
39 certification. If the holder does not renew the license or certificate
40 prior to its expiration date, the holder may renew it within 30 days of
41 its expiration date by submitting a renewal application and paying a
42 renewal fee and a late fee. Any professional or occupational license
43 or certificate of registration or certification not renewed within 30
44 days of its expiration date shall be suspended without a hearing.

45 c. Any individual who continues to practice with an expired license
46 or certificate of registration or certification after 30 days following its
47 expiration date shall be deemed to be engaged in unlicensed practice

1 of the regulated profession or occupation, even if no notice of
2 suspension has been provided to the individual.

3 d. A professional or occupational license or certificate of
4 registration or certification suspended pursuant to this section may be
5 reinstated within five years following its date of expiration upon
6 submission of a renewal application and payment of an additional
7 reinstatement fee. An applicant seeking reinstatement of a license or
8 certificate suspended pursuant to this section more than five years past
9 its expiration date shall successfully complete the examination required
10 for initial licensure, registration or certification and submit a renewal
11 application and payment of an additional reinstatement fee.

12 ²e. A board specified in section 2 of P.L. 1978, c. 73 (C. 45:1-15)
13 shall send a notice of renewal to each of its holders of a professional
14 or occupational license or certificate of registration or certification, as
15 applicable, at least 60 days prior to the expiration of the license or
16 certificate. If the notice to renew is not sent at least 60 days prior to
17 the expiration date, no monetary penalties or fines shall apply to the
18 holder for failure to renew.²

19
20 6. (New section) A board may reinstate the professional or
21 occupational license or certificate of registration or certification of an
22 applicant whose license or certificate has been suspended pursuant to
23 section 5 of P.L. , c. (C.)(now before the Legislature as this
24 bill), provided that the applicant otherwise qualifies for licensure,
25 registration or certification and submits the following upon application
26 for reinstatement:

27 a. Payment of all past delinquent renewal fees;

28 b. Payment of a reinstatement fee;

29 c. An affidavit of employment listing each job held during the
30 period of suspended license, registration or certification which
31 includes the names, addresses, and telephone numbers of each
32 employer; and

33 d. If applicable, satisfactory proof that the applicant has maintained
34 proficiency by completing the continuing education hours or credits
35 required for the renewal of an active license or certificate of
36 registration or certification.

37
38 7. (New section) a. Renewal applications for all professional or
39 occupational licenses or certificates of registration or certification shall
40 provide the applicant with the option of either active or inactive
41 renewal. A renewal applicant electing to renew as inactive shall not
42 engage in professional or occupational practice within the State.

43 b. An applicant who selects the inactive renewal option shall
44 remain on inactive status for the entire renewal period unless, upon
45 application to the board, the board permits the inactive applicant to
46 return to active status provided such applicant presents satisfactory
47 proof that he has maintained proficiency by completing the continuing

1 education hours or credits required for the renewal of an active
2 license, registration or certification, if applicable.

3

4 8. (New section) Consistent with their enabling acts, P.L.1978,
5 c.73 (C.45:1-14 et seq.) and the "Administrative Procedure Act,"
6 P.L.1968, c.410 (C.52:14B-1 et seq.), the boards and others set forth
7 in section 2 of P.L.1978, c.73 (C.45:1-15) are authorized to adopt
8 rules and regulations to serve the public health, safety and welfare.

9

10 9. Section 12 of P.L.1978, c.73 (C.45:1-25) is amended to read as
11 follows:

12 12. Any person **【violating】** who engages in any conduct in
13 violation of any provision of an act or regulation administered by a
14 board shall, in addition to any other sanctions provided herein, be
15 liable to a civil penalty of not more than **【\$2,500.00】** \$10,000 for the
16 first **【offense】** violation and not more than **【\$5,000.00】** \$20,000 for
17 the second and each subsequent **【offense】** violation. For the purpose
18 of construing this section, each **【transaction or statutory】** act in
19 violation of any provision of an act or regulation administered by a
20 board shall constitute a separate **【offense; provided, however, a**
21 **second or subsequent offense shall not be deemed to exist unless】**
22 violation and shall be deemed a second or subsequent violation under
23 the following circumstances:

24 (1) an administrative or court order has been entered in a prior,
25 separate and independent proceeding;

26 (2) the person is found within a single proceeding to have
27 committed more than one violation of any provision of an act or
28 regulation administered by a board; or

29 (3) the person is found within a single proceeding to have
30 committed separate violations of any provision of more than one act
31 or regulation administered by a board.

32 b. In lieu of an administrative proceeding or an action in the
33 Superior Court, the Attorney General may bring an action in the name
34 of any board for the collection or enforcement of civil penalties for the
35 violation of any provision of an act or regulation administered by such
36 board. Such action may be brought in summary manner pursuant to
37 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) and the rules of
38 court governing actions for the collection of civil penalties in the
39 municipal court where the offense occurred. Process in such action
40 may be by summons or warrant and in the event that the defendant in
41 such action fails to answer such action, the court shall, upon finding
42 an unlawful act or practice to have been committed by the defendant,
43 issue a warrant for the defendant's arrest in order to bring such person
44 before the court to satisfy the civil penalties imposed. In any action
45 commenced pursuant to this section, the court may order restored to
46 any person in interest any moneys or property acquired by means of an

1 unlawful act or practice.

2 c. Any action alleging the unlicensed practice of a profession or
3 occupation shall be brought pursuant to this section or, where
4 injunctive relief is sought, by an action commenced in the Superior
5 Court. In any action brought pursuant to this act, a board or the court
6 may order the payment of costs for the use of the State, including, but
7 not limited to, costs of investigation, expert witness fees and costs,
8 attorney fees and costs, and transcript costs.

9 (cf: P.L.1991, c.91, s.449)

10

11 10. Section 17 of P.L.1973, c.19 (C.45:9A-17) is amended to read
12 as follows:

13 17. The Director of the Division of Consumer Affairs shall have the
14 power **[upon]** after notice and opportunity for a hearing to revoke,
15 suspend, or refuse to renew any license, temporary license or
16 certificate of endorsement issued pursuant to this act **[for the**
17 following reasons:

18 a. Being convicted of an offense involving moral turpitude. The
19 record of such conviction, or certified copy thereof from the clerk of
20 the court where such conviction occurred or by the judge of such
21 court, shall be sufficient evidence to warrant revocation or suspension.

22 b. By securing a license or certificate under this act through fraud
23 or deceit.

24 c. For unethical conduct, ignorance, neglect, incompetence or
25 inefficiency in the conduct of his practice. Incompetence shall include
26 but not be limited to the improper or unnecessary fitting of a hearing
27 aid. For the purposes of this act unethical conduct shall mean:

28 (1) The obtaining of any fee or the making of any sale by fraud or
29 misrepresentation.

30 (2) Employing directly or indirectly any suspended or unlicensed
31 person to perform any work covered by this act.

32 (3) Using or causing or promoting the use of any advertising
33 matter, promotional literature, testimonial, guarantee, warranty, label,
34 brand, insignia or any other representation, however disseminated or
35 published, which, is misleading, deceiving, improbable or untruthful.

36 (4) Advertising a particular model, type or kind of hearing aid for
37 sale when purchasers or prospective purchasers responding to the
38 advertisement cannot purchase or are dissuaded from purchasing the
39 advertised model, type or kind where it is established that the purpose
40 of the advertisement is to obtain prospects for the sale of a different
41 model, type or kind than that advertised.

42 (5) Representing that the services or advice of a person licensed to
43 practice medicine will be used or made available in the selection,
44 fitting, adjustment, maintenance or repair of hearing aids when that is
45 not true, or using the word "doctor," "clinic," or like words,
46 abbreviations or symbols which tend to connote the medical profession
47 when such use is not accurate.

1 (6) Habitual intemperance.

2 (7) Gross immorality.

3 (8) Permitting another to use his license or certificate.

4 (9) To imitate or simulate the trademarks, trade names, brands or
5 labels of competitors, with the capacity and tendency or effect of
6 misleading or deceiving purchasers or prospective purchasers; or

7 (10) To use any trade name, corporate name, trademark, or other
8 trade designation, which has the capacity and tendency or effect of
9 misleading or deceiving purchasers or prospective purchasers as to the
10 name, nature, or origin of any product of the industry, or of any
11 material used therein, or which is false, deceptive, or misleading in any
12 other material respect.

13 (11) To directly or indirectly give, or offer to give, or permit or
14 cause to be given money or anything of value to any person who
15 advises another in a professional capacity as an inducement to
16 influence him or have him influence others to purchase or contract to
17 purchase products sold or offered for sale by a hearing aid dispenser,
18 or to influence persons to refrain from dealing in the products of
19 competitors.

20 d. For practicing while knowingly suffering with a contagious or
21 infectious disease.

22 e. For the use of a false name or alias in his practice.

23 f. For violating any of the provisions of this act or rules or
24 regulations promulgated hereunder] as provided by section 8 of
25 P.L.1978, c.73 (C.45:1-21).

26 (cf: P.L.1973, c.19, s.17)

27

28 11. R.S.45:14-12 is amended to read as follows:

29 45:14-12. [The board may refuse an application for examination
30 or may suspend or revoke the certificate of a registered pharmacist or
31 a registered assistant pharmacist for any of the following causes:
32 When the application or registration is shown to have been obtained
33 by misrepresentation or fraudulent means or when the applicant or
34 registrant is guilty of chronic or persistent inebriety, or has been
35 adjudged guilty of violating any State or Federal law or any law of the
36 District of Columbia or of any territory of the United States relating
37 to the practice of pharmacy, or relating to the dispensing of drugs, or
38 has been convicted of a crime involving moral turpitude, or has
39 impersonated an applicant for registration before the board or has been
40 convicted of knowingly, intentionally or fraudulently adulterating or
41 causing to be adulterated drugs, chemicals or medicinal preparations
42 or has sold or caused to be sold adulterated drugs, chemicals or
43 medicinal preparations knowing, or having reason to know, that same
44 were adulterated, or has procured or attempted to procure registration
45 for another by misrepresentation or fraudulent means, and the board
46 shall refuse an application for examination or suspend or revoke the
47 certificate of a registered pharmacist or a registered assistant

1 pharmacist when the applicant or registrant is shown to be addicted
2 to the use of narcotic drugs, or has been convicted of violating any law
3 of this or any other state or of the United States relating to narcotic
4 drugs or has been adjudicated an incompetent, or is shown to have any
5 abnormal physical or mental condition which threatens the safety of
6 persons to whom said applicant or registrant might sell or dispense
7 prescriptions, drugs, chemicals, medicinal preparations or devices or
8 for whom he might manufacture, prepare or package, or supervise the
9 manufacturing, preparation or packaging of prescriptions, drugs,
10 chemicals, medicinal preparations or devices.】 In addition to the
11 provisions of section 8 of P.L.1978, c.73 (C.45:1-21), the board may
12 refuse an application for examination or may suspend or revoke the
13 certificate of a registered pharmacist or a registered assistant
14 pharmacist upon proof satisfactory to the board that such registered
15 pharmacist or such registered assistant pharmacist is guilty of grossly
16 unprofessional conduct and the following acts are hereby declared to
17 constitute grossly unprofessional conduct for the purpose of this act:

18 a. Paying rebates or entering into an agreement for payment of
19 rebates to any physician, dentist or other person for the recommending
20 of the services of any person.

21 b. The providing or causing to be provided to a physician, dentist,
22 veterinarian or other persons authorized to prescribe, prescription
23 blanks or forms bearing the pharmacist's or pharmacy's name, address
24 or other means of identification.

25 c. (Deleted by amendment.)

26 d. The claiming of professional superiority in the compounding or
27 filling of prescriptions or in any manner implying professional
28 superiority which may reduce public confidence in the ability,
29 character or integrity of other pharmacists.

30 e. Fostering the interest of one group of patients at the expense of
31 another which compromises the quality or extent of professional
32 services or facilities made available.

33 f. The distribution of premiums or rebates of any kind whatever in
34 connection with the sale of drugs and medications provided, however,
35 that trading stamps and similar devices shall not be considered to be
36 rebates for the purposes of this chapter and provided further that
37 discounts, premiums and rebates may be provided in connection with
38 the sale of drugs and medications to any person who is 62 years of
39 age or older. Before a certificate shall be refused, suspended or
40 revoked, the accused person shall be furnished with a copy of the
41 complaint and given a hearing before the board. Any person whose
42 certificate is so suspended or revoked shall be deemed an unregistered
43 person during the period of such suspension or revocation, and as such
44 shall be subject to the penalties prescribed in this chapter, but such
45 person may, at the discretion of the board, have his certificate
46 reinstated at any time without an examination, upon application to the
47 board. Any person to whom a certificate shall be denied by the board

1 or whose certificate shall be suspended or revoked by the board shall
2 have the right to review such action by appeal to the Appellate
3 Division of the Superior Court in lieu of prerogative writ.

4 g. Advertising of prescription drug prices in a manner inconsistent
5 with rules and regulations promulgated by the Director of the Division
6 of Consumer Affairs; provided, however, no such advertising of any
7 drug or substance shall be authorized unless the Commissioner of
8 Health and Senior Services shall have determined that such
9 advertising is not harmful to public health, safety and welfare.

10 (cf: P.L.1977, c.240, s.2)

11
12 12. The following sections of law are repealed:

13 Section 1 of P.L.1975, c.382 (C.45:1-13);

14 section 21 of P.L.1983, c.420 (C.45:3B-21);

15 R.S.45:5-8;

16 R.S.45:6-7;

17 R.S.45:6-22;

18 section 12 of P.L.1979, c.46 (C.45:6-59);

19 R.S.45:9-16;

20 section 13 of P.L.1947, c.262 (C.45:11-35);

21 R.S.45:12-11;

22 section 30 of P.L.1966, c.313 (C.45:14-12.2);

23 R.S.45:14-35; and

24 section 24 of P.L.1966, c.282 (C.45:14B-24).

25
26 13. This act shall take effect immediately.

27
28
29 _____
30
31 Provides for uniform rules for revocation of professional and
32 occupational licenses.

SENATE, No. 1807

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 6, 1999

Sponsored by:
Senator GERALD CARDINALE
District 39 (Bergen)

SYNOPSIS

Provides for uniform rules for revocation of professional and occupational licenses.

CURRENT VERSION OF TEXT

As introduced.



S1807 CARDINALE

2

1 AN ACT concerning professional and occupational licensing boards
2 and revising parts of the statutory law.

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

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8 follows:

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10 all professions or occupations regulated by **[or]** , through **[such]** or
11 with the advice of those boards: the New Jersey State Board of
12 Accountancy, the New Jersey State Board of Architects, the New
13 Jersey State Board of Cosmetology and Hairstyling, the Board of
14 Examiners of Electrical Contractors, the New Jersey State Board of
15 Dentistry, the State Board of Mortuary Science of New Jersey, the
16 State Board of Professional Engineers and Land Surveyors, the State
17 Board of Marriage and Family Therapy Examiners, the State Board of
18 Medical Examiners, the New Jersey Board of Nursing, the New Jersey
19 State Board of Optometrists, the State Board of Examiners of
20 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of
21 Pharmacy, the State Board of Professional Planners, the State Board
22 of Psychological Examiners, the State Board of Examiners of Master
23 Plumbers, the State Board of Shorthand Reporting, the State Board of
24 Veterinary Medical Examiners, the Acupuncture Examining Board, the
25 State Board of Chiropractic Examiners, the State Board of Respiratory
26 Care, the State Real Estate Appraiser Board, **[and]** the State Board
27 of Social Work Examiners , the Professional Counselor Examiners
28 Committee, the New Jersey Cemetery Board, the Orthotics and
29 Prosthetics Board of Examiners, the Occupational Therapy Advisory
30 Council, the Electrologists Advisory Committee, the Alcohol and Drug
31 Counselor Committee, the Fire Alarm, Burglar Alarm, and Locksmith
32 Advisory Committee, the Home Inspection Advisory Committee, the
33 Massage, Bodywork and Somatic Therapy Examining Committee, and
34 the Audiology and Speech-Language Pathology Advisory Committee.
35 (cf: P.L.1995, c.366, s.23)

36
37 2. Section 8 of P.L. 1978, c. 73 (C.45:1-21) is amended to read as
38 follows:

39 8. A board may refuse to admit a person to an examination or may
40 refuse to issue or may suspend or revoke any certificate, registration
41 or license issued by the board upon proof that the applicant or holder
42 of such certificate, registration or license.

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.

S1807 CARDINALE

- 1 a. Has obtained a certificate, registration, license or authorization
2 to sit for an examination, as the case may be, through fraud, deception,
3 or misrepresentation;
- 4 b. Has engaged in the use or employment of dishonesty, fraud,
5 deception, misrepresentation, false promise or false pretense;
- 6 c. Has engaged in gross negligence, gross malpractice or gross
7 incompetence which damaged or endangered the life, health, welfare,
8 safety or property of any person;
- 9 d. Has engaged in repeated acts of negligence, malpractice or
10 incompetence;
- 11 e. Has engaged in professional or occupational misconduct as may
12 be determined by the board;
- 13 f. Has been convicted of , or engaged in acts constituting, any
14 crime or offense involving moral turpitude or **【any crime】** relating
15 adversely to the activity regulated by the board. For the purpose of
16 this subsection a judgment of conviction or a plea of guilty, non vult,
17 nolo contendere or any other such disposition of alleged criminal
18 activity shall be deemed a conviction;
- 19 g. Has had his authority to engage in the activity regulated by the
20 board revoked or suspended by any other state, agency or authority
21 for reasons consistent with this section;
- 22 h. Has violated or failed to comply with the provisions of any act
23 or regulation administered by the board;
- 24 i. Is incapable, for medical or any other good cause, of discharging
25 the functions of a licensee in a manner consistent with the public's
26 health, safety and welfare;
- 27 j. Has repeatedly failed to submit completed applications, or parts
28 of, or documentation submitted in conjunction with, such applications,
29 required to be filed with the Department of Environmental Protection;
- 30 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et
31 seq.) or any insurance fraud prevention law or act of another
32 jurisdiction or has been adjudicated, in civil or administrative
33 proceedings, of a violation of P.L. 1983, c. 320 (C. 17:33A-1 et seq.)
34 or has been subject to a final order, entered in civil or administrative
35 proceedings, that imposed civil penalties under that act against the
36 applicant or holder;
- 37 l. Is presently engaged in drug or alcohol use that is likely to impair
38 the ability to practice the profession or occupation with reasonable
39 skill and safety. For purposes of this subsection, the term "presently"
40 means at this time or any time within the previous 365 days;
- 41 m. Has prescribed or dispensed controlled dangerous substances
42 indiscriminately or without good cause, or where the applicant or
43 holder knew or should have known that the substances were to be
44 used for unauthorized consumption or distribution;
- 45 n. Has permitted an unlicensed person or entity to perform an act
46 for which a license or certificate of registration or certification is

1 required by the board, or aided and abetted an unlicensed person or
2 entity in performing such an act:

3 o. Advertised fraudulently in any manner.

4 For purposes of this act:

5 "Completed application" means the submission of all of the
6 information designated on the checklist, adopted pursuant to section
7 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
8 permit for which application is made.

9 "Permit" has the same meaning as defined in section 1 of P.L.1991,
10 c.421 (C.13:1D-101).

11 (cf: P.L.1997, c.151, s.10)

12

13 3. Section 9 of P.L. 1978, c. 73 (C. 45:1-22) is amended to read
14 as follows:

15 9. In addition or as an alternative, as the case may be, to revoking,
16 suspending or refusing to renew any license, registration or certificate
17 issued by it, a board may, after affording an opportunity to be heard:

18 a. Issue a letter of warning, reprimand, or censure with regard to
19 any act, conduct or practice which in the judgment of the board upon
20 consideration of all relevant facts and circumstances does not warrant
21 the initiation of formal action;

22 b. Assess civil penalties in accordance with this act;

23 c. Order that any person violating any provision of an act or
24 regulation administered by such board to cease and desist from future
25 violations thereof or to take such affirmative corrective action as may
26 be necessary with regard to any act or practice found unlawful by the
27 board;

28 d. Order any person found to have violated any provision of an act
29 or regulation administered by such board to restore to any person
30 aggrieved by an unlawful act or practice, any moneys or property, real
31 or personal, acquired by means of such act or practice; provided,
32 however, no board shall order restoration in a dollar amount greater
33 than those moneys received by a licensee or his agent or any other
34 person violating the act or regulation administered by the board;

35 e. Order any person, as a condition for continued, reinstated or
36 renewed licensure, to secure medical or such other professional
37 treatment as may be necessary to properly discharge licensee
38 functions.

39 A board may, upon a duly verified application of the Attorney
40 General **【alleging】** that either provides proof of a conviction of a court
41 of competent jurisdiction for a crime or offense involving moral
42 turpitude or relating adversely to the regulated profession or
43 occupation, or alleges an act or practice violating any provision of an
44 act or regulation administered by such board, enter a temporary order
45 suspending or limiting any license issued by the board pending plenary
46 hearing on an administrative complaint; provided, however, no such

1 temporary order shall be entered unless the application made to the
2 board palpably demonstrates a clear and imminent danger to the public
3 health, safety and welfare and notice of such application is given to the
4 licensee affected by such order.

5 In any administrative proceeding commenced on a complaint
6 alleging a violation of an act or regulation administered by a board,
7 such board may issue subpoenas to compel the attendance of witnesses
8 or the production of books, records, or documents at the hearing on
9 the complaint.

10 (cf: P.L.1978, c.73, s.9)

11

12 4. (New section) The Director of the Division of Consumer Affairs
13 may by rule establish, prescribe, or modify administrative fees charged
14 by boards in accordance with the "Administrative Procedure Act," P.L.
15 1968, c. 410 (C. 52:14B-1 et seq.). For purposes of this section,
16 "administrative fees" are charges assessed to licensees, registrants or
17 holders of certificates, as the case may be, for board functions that are
18 not unique to a particular board but are uniform throughout all boards.
19 Administrative fees include, but are not limited to, fees for a duplicate
20 or replacement license, certification or registration, late renewal fee,
21 license reinstatement fee, and the fee for processing change of address.

22

23 5. (New section) a. Notwithstanding any other act or regulation
24 to the contrary, the provisions of this section and sections 6 and 7 of
25 P.L. , c. (C.) (now before the Legislature as this bill) shall apply
26 to every holder of a professional or occupational license or certificate
27 of registration or certification issued or renewed by a board specified
28 in section 2 of P.L. 1978, c.73 (P.L. 45:1-15), who seeks renewal of
29 that license or certificate.

30 b. Every holder of a professional or occupational license or
31 certificate of registration or certification, issued or renewed by a board
32 specified in section 2 of P.L. 1978, c. 73 (C. 45:1-15), who seeks
33 renewal shall submit a renewal application and pay a renewal fee prior
34 to the date of expiration of the license or certificate of registration or
35 certification. If the holder does not renew the license or certificate
36 prior to its expiration date, the holder may renew it within 30 days of
37 its expiration date by submitting a renewal application and paying a
38 renewal fee and a late fee. Any professional or occupational license
39 or certificate of registration or certification not renewed within 30
40 days of its expiration date shall be suspended without a hearing.

41 c. Any individual who continues to practice with an expired license
42 or certificate of registration or certification after 30 days following its
43 expiration date shall be deemed to be engaged in unlicensed practice
44 of the regulated profession or occupation, even if no notice of
45 suspension has been provided to the individual.

46 d. A professional or occupational license or certificate of

1 registration or certification suspended pursuant to this section may be
2 reinstated within five years following its date of expiration upon
3 submission of a renewal application and payment of an additional
4 reinstatement fee. An applicant seeking reinstatement of a license or
5 certificate suspended pursuant to this section more than five years past
6 its expiration date shall successfully complete the examination required
7 for initial licensure, registration or certification and submit a renewal
8 application and payment of an additional reinstatement fee.

9

10 6. (New section) A board may reinstate the professional or
11 occupational license or certificate of registration or certification of an
12 applicant whose license or certificate has been suspended pursuant to
13 section 5 of P.L. , c. (C.)(now before the Legislature as this
14 bill), provided that the applicant otherwise qualifies for licensure,
15 registration or certification and submits the following upon application
16 for reinstatement:

17 a. Payment of all past delinquent renewal fees;

18 b. Payment of a reinstatement fee;

19 c. An affidavit of employment listing each job held during the
20 period of suspended license, registration or certification which
21 includes the names, addresses, and telephone numbers of each
22 employer; and

23 d. If applicable, satisfactory proof that the applicant has maintained
24 proficiency by completing the continuing education hours or credits
25 required for the renewal of an active license or certificate of
26 registration or certification.

27

28 7. (New section) a. Renewal applications for all professional or
29 occupational licenses or certificates of registration or certification shall
30 provide the applicant with the option of either active or inactive
31 renewal. A renewal applicant electing to renew as inactive shall not
32 engage in professional or occupational practice within the State.

33 b. An applicant who selects the inactive renewal option shall
34 remain on inactive status for the entire renewal period unless, upon
35 application to the board, the board permits the inactive applicant to
36 return to active status provided such applicant presents satisfactory
37 proof that he has maintained proficiency by completing the continuing
38 education hours or credits required for the renewal of an active
39 license, registration or certification, if applicable.

40

41 8. (New section) Consistent with their enabling acts, P.L.1978, c.
42 73 (C.45:1-14 et seq.) and the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.), the boards and others set forth
44 in section 2 of P.L.1978, c.73 (C.45:1-15) are authorized to adopt
45 rules and regulations to serve the public health, safety and welfare.

1 9. Section 12 of P.L. 1978, c. 73 (C. 45:1-25) is amended to read
2 as follows:

3 12. Any person ~~【violating】~~ who engages in any conduct in
4 violation of any provision of an act or regulation administered by a
5 board shall, in addition to any other sanctions provided herein, be
6 liable to a civil penalty of not more than ~~【\$2,500.00】~~ \$10,000 for the
7 first ~~【offense】~~ violation and not more than ~~【\$5,000.00】~~ \$20,000 for
8 the second and each subsequent ~~【offense】~~ violation. For the purpose
9 of construing this section, each ~~【transaction or statutory】~~ act in
10 violation of any provision of an act or regulation administered by a
11 board shall constitute a separate ~~【offense; provided, however, a~~
12 ~~second or subsequent offense shall not be deemed to exist unless】~~
13 violation and shall be deemed a second or subsequent violation under
14 the following circumstances:

15 (1) an administrative or court order has been entered in a prior,
16 separate and independent proceeding;

17 (2) the person is found within a single proceeding to have
18 committed more than one violation of any provision of an act or
19 regulation administered by a board; or

20 (3) the person is found within a single proceeding to have
21 committed separate violations of any provision of more than one act
22 or regulation administered by a board.

23 b. In lieu of an administrative proceeding or an action in the
24 Superior Court, the Attorney General may bring an action in the name
25 of any board for the collection or enforcement of civil penalties for the
26 violation of any provision of an act or regulation administered by such
27 board. Such action may be brought in summary manner pursuant to
28 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) and the rules of
29 court governing actions for the collection of civil penalties in the
30 municipal court where the offense occurred. Process in such action
31 may be by summons or warrant and in the event that the defendant in
32 such action fails to answer such action, the court shall, upon finding
33 an unlawful act or practice to have been committed by the defendant,
34 issue a warrant for the defendant's arrest in order to bring such person
35 before the court to satisfy the civil penalties imposed. In any action
36 commenced pursuant to this section, the court may order restored to
37 any person in interest any moneys or property acquired by means of an
38 unlawful act or practice.

39 c. Any action alleging the unlicensed practice of a profession or
40 occupation shall be brought pursuant to this section or, where
41 injunctive relief is sought, by an action commenced in the Superior
42 Court. In any action brought pursuant to this act, a board or the court
43 may order the payment of costs for the use of the State, including, but
44 not limited to, costs of investigation, expert witness fees and costs,
45 attorney fees and costs, and transcript costs.

46 (cf: P.L.1991, c.91, s.449)

1 10. Section 17 of P.L.1973, c.19 (C.45:9A-17) is amended to read
2 as follows:

3 17. The Director of the Division of Consumer Affairs shall have the
4 power **[upon]** after notice and opportunity for a hearing to revoke,
5 suspend, or refuse to renew any license, temporary license or
6 certificate of endorsement issued pursuant to this act **[for the**
7 following reasons:

8 a. Being convicted of an offense involving moral turpitude. The
9 record of such conviction, or certified copy thereof from the clerk of
10 the court where such conviction occurred or by the judge of such
11 court, shall be sufficient evidence to warrant revocation or suspension.

12 b. By securing a license or certificate under this act through fraud
13 or deceit.

14 c. For unethical conduct, ignorance, neglect, incompetence or
15 inefficiency in the conduct of his practice. Incompetence shall include
16 but not be limited to the improper or unnecessary fitting of a hearing
17 aid. For the purposes of this act unethical conduct shall mean:

18 (1) The obtaining of any fee or the making of any sale by fraud or
19 misrepresentation.

20 (2) Employing directly or indirectly any suspended or unlicensed
21 person to perform any work covered by this act.

22 (3) Using or causing or promoting the use of any advertising
23 matter, promotional literature, testimonial, guarantee, warranty, label,
24 brand, insignia or any other representation, however disseminated or
25 published, which, is misleading, deceiving, improbable or untruthful.

26 (4) Advertising a particular model, type or kind of hearing aid for
27 sale when purchasers or prospective purchasers responding to the
28 advertisement cannot purchase or are dissuaded from purchasing the
29 advertised model, type or kind where it is established that the purpose
30 of the advertisement is to obtain prospects for the sale of a different
31 model, type or kind than that advertised.

32 (5) Representing that the services or advice of a person licensed to
33 practice medicine will be used or made available in the selection,
34 fitting, adjustment, maintenance or repair of hearing aids when that is
35 not true, or using the word "doctor," "clinic," or like words,
36 abbreviations or symbols which tend to connote the medical profession
37 when such use is not accurate.

38 (6) Habitual intemperance.

39 (7) Gross immorality.

40 (8) Permitting another to use his license or certificate.

41 (9) To imitate or simulate the trademarks, trade names, brands or
42 labels of competitors, with the capacity and tendency or effect of
43 misleading or deceiving purchasers or prospective purchasers; or

44 (10) To use any trade name, corporate name, trademark, or other
45 trade designation, which has the capacity and tendency or effect of
46 misleading or deceiving purchasers or prospective purchasers as to the

1 name, nature, or origin of any product of the industry, or of any
2 material used therein, or which is false, deceptive, or misleading in any
3 other material respect.

4 (11) To directly or indirectly give, or offer to give, or permit or
5 cause to be given money or anything of value to any person who
6 advises another in a professional capacity as an inducement to
7 influence him or have him influence others to purchase or contract to
8 purchase products sold or offered for sale by a hearing aid dispenser,
9 or to influence persons to refrain from dealing in the products of
10 competitors.

11 d. For practicing while knowingly suffering with a contagious or
12 infectious disease.

13 e. For the use of a false name or alias in his practice.

14 f. For violating any of the provisions of this act or rules or
15 regulations promulgated hereunder] as provided by section 8 of P.L.
16 1978, c. 73 (C.45:1-21).

17 (cf: P.L.1973, c.19, s.17)

18

19 11. R.S. 45:14-12 is amended to read as follows:

20 45:14-12. [The board may refuse an application for examination
21 or may suspend or revoke the certificate of a registered pharmacist or
22 a registered assistant pharmacist for any of the following causes:
23 When the application or registration is shown to have been obtained
24 by misrepresentation or fraudulent means or when the applicant or
25 registrant is guilty of chronic or persistent inebriety, or has been
26 adjudged guilty of violating any State or Federal law or any law of the
27 District of Columbia or of any territory of the United States relating
28 to the practice of pharmacy, or relating to the dispensing of drugs, or
29 has been convicted of a crime involving moral turpitude, or has
30 impersonated an applicant for registration before the board or has been
31 convicted of knowingly, intentionally or fraudulently adulterating or
32 causing to be adulterated drugs, chemicals or medicinal preparations
33 or has sold or caused to be sold adulterated drugs, chemicals or
34 medicinal preparations knowing, or having reason to know, that same
35 were adulterated, or has procured or attempted to procure registration
36 for another by misrepresentation or fraudulent means, and the board
37 shall refuse an application for examination or suspend or revoke the
38 certificate of a registered pharmacist or a registered assistant
39 pharmacist when the applicant or registrant is shown to be addicted
40 to the use of narcotic drugs, or has been convicted of violating any law
41 of this or any other state or of the United States relating to narcotic
42 drugs or has been adjudicated an incompetent, or is shown to have any
43 abnormal physical or mental condition which threatens the safety of
44 persons to whom said applicant or registrant might sell or dispense
45 prescriptions, drugs, chemicals, medicinal preparations or devices or
46 for whom he might manufacture, prepare or package, or supervise the

1 manufacturing, preparation or packaging of prescriptions, drugs,
2 chemicals, medicinal preparations or devices.】 In addition to the
3 provisions of section 8 of P.L. 1978, c. 73 (C. 45:1-21), the board may
4 refuse an application for examination or may suspend or revoke the
5 certificate of a registered pharmacist or a registered assistant
6 pharmacist upon proof satisfactory to the board that such registered
7 pharmacist or such registered assistant pharmacist is guilty of grossly
8 unprofessional conduct and the following acts are hereby declared to
9 constitute grossly unprofessional conduct for the purpose of this act:

10 a. Paying rebates or entering into an agreement for payment of
11 rebates to any physician, dentist or other person for the recommending
12 of the services of any person.

13 b. The providing or causing to be provided to a physician, dentist,
14 veterinarian or other persons authorized to prescribe, prescription
15 blanks or forms bearing the pharmacist's or pharmacy's name, address
16 or other means of identification.

17 c. (Deleted by amendment.)

18 d. The claiming of professional superiority in the compounding or
19 filling of prescriptions or in any manner implying professional
20 superiority which may reduce public confidence in the ability,
21 character or integrity of other pharmacists.

22 e. Fostering the interest of one group of patients at the expense of
23 another which compromises the quality or extent of professional
24 services or facilities made available.

25 f. The distribution of premiums or rebates of any kind whatever in
26 connection with the sale of drugs and medications provided, however,
27 that trading stamps and similar devices shall not be considered to be
28 rebates for the purposes of this chapter and provided further that
29 discounts, premiums and rebates may be provided in connection with
30 the sale of drugs and medications to any person who is 62 years of
31 age or older. Before a certificate shall be refused, suspended or
32 revoked, the accused person shall be furnished with a copy of the
33 complaint and given a hearing before the board. Any person whose
34 certificate is so suspended or revoked shall be deemed an unregistered
35 person during the period of such suspension or revocation, and as such
36 shall be subject to the penalties prescribed in this chapter, but such
37 person may, at the discretion of the board, have his certificate
38 reinstated at any time without an examination, upon application to the
39 board. Any person to whom a certificate shall be denied by the board
40 or whose certificate shall be suspended or revoked by the board shall
41 have the right to review such action by appeal to the Appellate
42 Division of the Superior Court in lieu of prerogative writ.

43 g. Advertising of prescription drug prices in a manner inconsistent
44 with rules and regulations promulgated by the Director of the Division
45 of Consumer Affairs; provided, however, no such advertising of any
46 drug or substance shall be authorized unless the Commissioner of

1 Health and Senior Services shall have determined that such
2 advertising is not harmful to public health, safety and welfare.
3 (cf: P.L.1977, c.240, s.2)

4
5 12. The following sections of law are repealed:
6 Section 1 of P.L.1975, c.382 (C.45:1-13);
7 section 21 of P.L.1983, c.420 (C.45:3B-21);
8 R.S. 45:5-8;
9 R.S. 45:6-7;
10 R.S. 45:6-22;
11 section 12 of P.L.1979, c.46 (C.45:6-59);
12 R.S. 45:9-16;
13 section 13 of P.L.1947, c.262 (C.45:11-35);
14 R.S. 45:12-11;
15 section 30 of P.L.1966, c.313 (C.45:14-12.2);
16 R.S. 45:14-35; and
17 section 24 of P.L.1966, c.282 (C.45:14B-24).

18
19 13. This act shall take effect immediately.

20
21
22 STATEMENT

23
24 In 1978, the Legislature enacted P.L.1978, c.73 (C.45:1-14 et seq.),
25 known as the "uniform enforcement act," to provide uniform
26 enforcement and sanctions in regard to the various professions and
27 occupations licensed pursuant to Title 45 of the Revised Statutes. The
28 purpose of that act was to establish consistent standards for licensee
29 conduct. One provision of that act declared that all inconsistent acts
30 were superseded and repealed. A year later, the Legislature enacted
31 P.L.1979, c.432, which specifically repealed most of the sections of
32 Title 45 that had been generally repealed by the uniform enforcement
33 act. However, a few sections which seem to have been affected by the
34 general repealer were nevertheless left in place. Each of these sections
35 establishes grounds for revocation of the license to practice a
36 particular health care profession.

37 The continuation of these license revocation provisions creates
38 uncertainty in the law on this subject. Conflicting arguments can be
39 made that the grounds for the revocation of a professional license are
40 those in section 8 of the uniform enforcement act, in the applicable
41 unrepealed section, or in both. While the effect of this uncertainty in
42 the law is reduced by the similarity in grounds for revocation in the
43 uniform enforcement act and most of the individual provisions, it still
44 should be corrected.

1 This bill repeals those unrepealed sections and amends section 8 of
2 the uniform enforcement act to include provisions which are currently
3 not in that section but which are in the sections being repealed.

4 In addition, some of the statutes establishing the various
5 professional and occupational boards do not specifically grant those
6 boards the authority to make regulations. This bill cures that defect.

7 The bill also provides for a uniform procedure for the renewal of
8 professional and occupational licenses and certificates of registration
9 and certification and revises the penalties for violation of the
10 professional and occupational licensure laws.

11 Many of the changes to the law provided by this bill are
12 recommended by the New Jersey Law Revision Commission pursuant
13 to its report entitled "Report and Recommendations Relating to Title
14 45 -- Professions and Occupations."

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1807

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 1999

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1807.

In 1978, the Legislature enacted P.L.1978, c.73 (C.45:1-14 et seq.), known as the "uniform enforcement act," to provide uniform enforcement and sanctions in regard to the various professions and occupations licensed pursuant to Title 45 of the Revised Statutes. The purpose of that act was to establish consistent standards for licensee conduct. One provision of that act declared that all inconsistent acts were superseded and repealed. A year later, the Legislature enacted P.L.1979, c.432, which specifically repealed most of the sections of Title 45 that had been generally repealed by the uniform enforcement act. However, a few sections which seem to have been affected by the general repealer were nevertheless left in place. Each of these sections establishes grounds for revocation of the license to practice a particular health care profession.

The continuation of these license revocation provisions creates uncertainty in the law on this subject. Conflicting arguments can be made that the grounds for the revocation of a professional license are those in section 8 of the uniform enforcement act, in the applicable unrepealed section, or in both. While the effect of this uncertainty in the law is reduced by the similarity in grounds for revocation in the uniform enforcement act and most of the individual provisions, it still should be corrected.

This bill repeals those unrepealed sections and amends section 8 of the uniform enforcement act to include provisions which are currently not in that section but which are in the sections being repealed.

In addition, some of the statutes establishing the various professional and occupational boards do not specifically grant those boards the authority to make regulations. This bill cures that defect.

The grounds for refusal to admit to examination or denial, suspension or revocation of a certificate, registration or license pursuant to the uniform enforcement act are modified and expanded as follows: the grounds of gross negligence, gross malpractice or gross incompetence are modified by adding "which damaged or

endangered the life, health, welfare, safety or property of any person;" the grounds of having been convicted of a crime of moral turpitude or relating adversely to a board regulated activity is expanded to include being convicted of, or engaging in acts constituting, a crime or offense involving moral turpitude or relating adversely to a board regulated activity; grounds in regard to the "New Jersey Insurance Fraud Prevention Act" are expanded to include violations of that act pursuant to civil or administrative proceedings; and grounds which currently exist, such as impairment because of the use of drugs or alcohol, the dispensing of controlled dangerous substances indiscriminately, permitting an unlicensed person to perform an act for which a license or certificate of registration or certification is required and advertising fraudulently in any manner or added or specified.

The bill provides that a regulatory board may enter a temporary order suspending or limiting any license issued by the board pending a hearing on an administrative complaint, if a duly verified application of the Attorney General provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation.

The Director of the Division of Consumer Affairs is given the authority to establish the administrative fees charged by the regulatory boards.

The bill establishes uniform renewal procedures for professional and occupational licenses (certification, registration) by boards located in the Division of Consumer Affairs. If a licensee does not renew his license prior to its expiration date, the holder may renew it within 30 days of its expiration date by submitting a renewal application and paying a renewal fee and late fee. Any license not renewed within 30 days of its expiration shall be suspended without a hearing and any licensee who continues to practice with an expired license shall be engaged in an unlicensed practice. A license suspended pursuant to this provision may be reinstated within five years following its date of expiration upon submission of a renewal application and payment of an additional reinstatement fee. An applicant seeking reinstatement after five years must submit an application, successfully complete an examination and pay an additional reinstatement fee. In addition, renewal applications shall provide the applicant with the option of either active or inactive renewal. An applicant electing to renew as inactive shall not engage in his profession or occupation, but may apply to the board for active status if the applicant presents satisfactory proof that he maintained proficiency by completing the continuing education hours or credits required for renewal.

The bill authorizes the professional and occupational boards to adopt rules and regulations to serve the public health, safety and welfare.

The bill increases the penalty provisions of the uniform enforcement act. A first violation is subject to a penalty of not more than \$10,000 (currently \$2,500) and a second or subsequent violation

is subject to a penalty of not more than \$20,000 (currently \$5,000). In an action alleging the unlicensed practice of a profession or occupation, a board or the court may order the payment of costs for use of the State and those costs may include costs of investigation, expert witness fees and costs, attorney fees and costs and transcript costs.

Some of the changes to the law provided by this bill are recommended by the New Jersey Law Revision Commission pursuant to its report entitled "Report and Recommendations Relating to Title 45 -- Professions and Occupations."

STATEMENT TO
[First Reprint]
SENATE, No. 1807

with Senate Floor Amendments
(Proposed By Senator CARDINALE)

ADOPTED: NOVEMBER 15, 1999

This amendment requires a professional or occupational licensing board to send a license renewal notice to a holder at least 60 days prior to expiration of the license, and if the board fails to do so, the holder would not be subject to any monetary penalty or fine for failure to renew.

ASSEMBLY, No. 3576

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED DECEMBER 2, 1999

Sponsored by:

Assemblyman RICHARD H. BAGGER

District 22 (Middlesex, Morris, Somerset and Union)

SYNOPSIS

Provides for uniform rules for revocation of professional and occupational licenses.

CURRENT VERSION OF TEXT

As introduced.



A3576 BAGGER

2

1 AN ACT concerning professional and occupational licensing boards
2 and revising parts of the statutory law.

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

6
7 1. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read as
8 follows:

9 2. The provisions of this act shall apply to the following boards and
10 all professions or occupations regulated by **[or]** , through **[such]** or
11 with the advice of those boards: the New Jersey State Board of
12 Accountancy, the New Jersey State Board of Architects, the New
13 Jersey State Board of Cosmetology and Hairstyling, the Board of
14 Examiners of Electrical Contractors, the New Jersey State Board of
15 Dentistry, the State Board of Mortuary Science of New Jersey, the
16 State Board of Professional Engineers and Land Surveyors, the State
17 Board of Marriage and Family Therapy Examiners, the State Board of
18 Medical Examiners, the New Jersey Board of Nursing, the New Jersey
19 State Board of Optometrists, the State Board of Examiners of
20 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of
21 Pharmacy, the State Board of Professional Planners, the State Board
22 of Psychological Examiners, the State Board of Examiners of Master
23 Plumbers, the State Board of Shorthand Reporting, the State Board of
24 Veterinary Medical Examiners, the Acupuncture Examining Board, the
25 State Board of Chiropractic Examiners, the State Board of Respiratory
26 Care, the State Real Estate Appraiser Board, **[and]** the State Board
27 of Social Work Examiners, the State Board of Physical Therapy, the
28 Professional Counselor Examiners Committee, the New Jersey
29 Cemetery Board, the Orthotics and Prosthetics Board of Examiners,
30 the Occupational Therapy Advisory Council, the Electrologists
31 Advisory Committee, the Alcohol and Drug Counselor Committee, the
32 Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the
33 Home Inspection Advisory Committee, the Massage, Bodywork and
34 Somatic Therapy Examining Committee, and the Audiology and
35 Speech-Language Pathology Advisory Committee.

36 (cf: P.L.1995, c.366, s.23)

37

38 2. Section 8 of P.L.1978, c.73 (C.45:1-21) is amended to read as
39 follows:

40 8. A board may refuse to admit a person to an examination or may
41 refuse to issue or may suspend or revoke any certificate, registration
42 or license issued by the board upon proof that the applicant or holder
43 of such certificate, registration or license.

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

Matter underlined thus is new matter.

A3576 BAGGER

- 1 a. Has obtained a certificate, registration, license or authorization
2 to sit for an examination, as the case may be, through fraud, deception,
3 or misrepresentation;
- 4 b. Has engaged in the use or employment of dishonesty, fraud,
5 deception, misrepresentation, false promise or false pretense;
- 6 c. Has engaged in gross negligence, gross malpractice or gross
7 incompetence which damaged or endangered the life, health, welfare,
8 safety or property of any person;
- 9 d. Has engaged in repeated acts of negligence, malpractice or
10 incompetence;
- 11 e. Has engaged in professional or occupational misconduct as may
12 be determined by the board;
- 13 f. Has been convicted of , or engaged in acts constituting, any
14 crime or offense involving moral turpitude or **【any crime】** relating
15 adversely to the activity regulated by the board. For the purpose of
16 this subsection a judgment of conviction or a plea of guilty, non vult,
17 nolo contendere or any other such disposition of alleged criminal
18 activity shall be deemed a conviction;
- 19 g. Has had his authority to engage in the activity regulated by the
20 board revoked or suspended by any other state, agency or authority
21 for reasons consistent with this section;
- 22 h. Has violated or failed to comply with the provisions of any act
23 or regulation administered by the board;
- 24 i. Is incapable, for medical or any other good cause, of discharging
25 the functions of a licensee in a manner consistent with the public's
26 health, safety and welfare;
- 27 j. Has repeatedly failed to submit completed applications, or parts
28 of, or documentation submitted in conjunction with, such applications,
29 required to be filed with the Department of Environmental Protection;
- 30 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et
31 seq.) or any insurance fraud prevention law or act of another
32 jurisdiction or has been adjudicated, in civil or administrative
33 proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.) or
34 has been subject to a final order, entered in civil or administrative
35 proceedings, that imposed civil penalties under that act against the
36 applicant or holder;
- 37 l. Is presently engaged in drug or alcohol use that is likely to impair
38 the ability to practice the profession or occupation with reasonable
39 skill and safety. For purposes of this subsection, the term "presently"
40 means at this time or any time within the previous 365 days;
- 41 m. Has prescribed or dispensed controlled dangerous substances
42 indiscriminately or without good cause, or where the applicant or
43 holder knew or should have known that the substances were to be
44 used for unauthorized consumption or distribution;
- 45 n. Has permitted an unlicensed person or entity to perform an act
46 for which a license or certificate of registration or certification is

1 required by the board, or aided and abetted an unlicensed person or
2 entity in performing such an act:

3 o. Advertised fraudulently in any manner.

4 For purposes of this act:

5 "Completed application" means the submission of all of the
6 information designated on the checklist, adopted pursuant to section
7 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
8 permit for which application is made.

9 "Permit" has the same meaning as defined in section 1 of P.L.1991,
10 c.421 (C.13:1D-101).

11 (cf: P.L.1997, c.151, s.10)

12
13 3. Section 9 of P.L.1978, c.73 (C.45:1-22) is amended to read as
14 follows:

15 9. In addition or as an alternative, as the case may be, to revoking,
16 suspending or refusing to renew any license, registration or certificate
17 issued by it, a board may, after affording an opportunity to be heard:

18 a. Issue a letter of warning, reprimand, or censure with regard to
19 any act, conduct or practice which in the judgment of the board upon
20 consideration of all relevant facts and circumstances does not warrant
21 the initiation of formal action;

22 b. Assess civil penalties in accordance with this act;

23 c. Order that any person violating any provision of an act or
24 regulation administered by such board to cease and desist from future
25 violations thereof or to take such affirmative corrective action as may
26 be necessary with regard to any act or practice found unlawful by the
27 board;

28 d. Order any person found to have violated any provision of an act
29 or regulation administered by such board to restore to any person
30 aggrieved by an unlawful act or practice, any moneys or property, real
31 or personal, acquired by means of such act or practice; provided,
32 however, no board shall order restoration in a dollar amount greater
33 than those moneys received by a licensee or his agent or any other
34 person violating the act or regulation administered by the board;

35 e. Order any person, as a condition for continued, reinstated or
36 renewed licensure, to secure medical or such other professional
37 treatment as may be necessary to properly discharge licensee
38 functions.

39 A board may, upon a duly verified application of the Attorney
40 General **【alleging】** that either provides proof of a conviction of a court
41 of competent jurisdiction for a crime or offense involving moral
42 turpitude or relating adversely to the regulated profession or
43 occupation, or alleges an act or practice violating any provision of an
44 act or regulation administered by such board, enter a temporary order
45 suspending or limiting any license issued by the board pending plenary
46 hearing on an administrative complaint; provided, however, no such

1 temporary order shall be entered unless the application made to the
2 board palpably demonstrates a clear and imminent danger to the public
3 health, safety and welfare and notice of such application is given to the
4 licensee affected by such order.

5 In any administrative proceeding commenced on a complaint
6 alleging a violation of an act or regulation administered by a board,
7 such board may issue subpoenas to compel the attendance of witnesses
8 or the production of books, records, or documents at the hearing on
9 the complaint.

10 (cf: P.L.1978, c.73, s.9)

11

12 4. (New section) The Director of the Division of Consumer Affairs
13 may by rule establish, prescribe, or modify administrative fees charged
14 by boards in accordance with the "Administrative Procedure Act,"
15 P.L.1968, c.410 (C.52:14B-1 et seq.). For purposes of this section,
16 "administrative fees" are charges assessed to licensees, registrants or
17 holders of certificates, as the case may be, for board functions that are
18 not unique to a particular board but are uniform throughout all boards.
19 Administrative fees include, but are not limited to, fees for a duplicate
20 or replacement license, certification or registration, late renewal fee,
21 license reinstatement fee, and the fee for processing change of address.

22

23 5. (New section) a. Notwithstanding any other act or regulation
24 to the contrary, the provisions of this section and sections 6 and 7 of
25 P.L. , c. (C.) (now before the Legislature as this bill) shall apply
26 to every holder of a professional or occupational license or certificate
27 of registration or certification issued or renewed by a board specified
28 in section 2 of P.L.1978, c.73 (P.L. 45:1-15), who seeks renewal of
29 that license or certificate.

30 b. Every holder of a professional or occupational license or
31 certificate of registration or certification, issued or renewed by a board
32 specified in section 2 of P.L.1978, c.73 (C.45:1-15), who seeks
33 renewal shall submit a renewal application and pay a renewal fee prior
34 to the date of expiration of the license or certificate of registration or
35 certification. If the holder does not renew the license or certificate
36 prior to its expiration date, the holder may renew it within 30 days of
37 its expiration date by submitting a renewal application and paying a
38 renewal fee and a late fee. Any professional or occupational license
39 or certificate of registration or certification not renewed within 30
40 days of its expiration date shall be suspended without a hearing.

41 c. Any individual who continues to practice with an expired license
42 or certificate of registration or certification after 30 days following its
43 expiration date shall be deemed to be engaged in unlicensed practice
44 of the regulated profession or occupation, even if no notice of
45 suspension has been provided to the individual.

46 d. A professional or occupational license or certificate of

1 registration or certification suspended pursuant to this section may be
2 reinstated within five years following its date of expiration upon
3 submission of a renewal application and payment of an additional
4 reinstatement fee. An applicant seeking reinstatement of a license or
5 certificate suspended pursuant to this section more than five years past
6 its expiration date shall successfully complete the examination required
7 for initial licensure, registration or certification and submit a renewal
8 application and payment of an additional reinstatement fee.

9 e. A board specified in section 2 of P.L. 1978, c. 73 (C. 45:1-15)
10 shall send a notice of renewal to each of its holders of a professional
11 or occupational license or certificate of registration or certification, as
12 applicable, at least 60 days prior to the expiration of the license or
13 certificate. If the notice to renew is not sent at least 60 days prior to
14 the expiration date, no monetary penalties or fines shall apply to the
15 holder for failure to renew.

16

17 6. (New section) A board may reinstate the professional or
18 occupational license or certificate of registration or certification of an
19 applicant whose license or certificate has been suspended pursuant to
20 section 5 of P.L. , c. (C.)(now before the Legislature as this
21 bill), provided that the applicant otherwise qualifies for licensure,
22 registration or certification and submits the following upon application
23 for reinstatement:

24 a. Payment of all past delinquent renewal fees;

25 b. Payment of a reinstatement fee;

26 c. An affidavit of employment listing each job held during the
27 period of suspended license, registration or certification which
28 includes the names, addresses, and telephone numbers of each
29 employer; and

30 d. If applicable, satisfactory proof that the applicant has maintained
31 proficiency by completing the continuing education hours or credits
32 required for the renewal of an active license or certificate of
33 registration or certification.

34

35 7. (New section) a. Renewal applications for all professional or
36 occupational licenses or certificates of registration or certification shall
37 provide the applicant with the option of either active or inactive
38 renewal. A renewal applicant electing to renew as inactive shall not
39 engage in professional or occupational practice within the State.

40 b. An applicant who selects the inactive renewal option shall
41 remain on inactive status for the entire renewal period unless, upon
42 application to the board, the board permits the inactive applicant to
43 return to active status provided such applicant presents satisfactory
44 proof that he has maintained proficiency by completing the continuing
45 education hours or credits required for the renewal of an active
46 license, registration or certification, if applicable.

1 8. (New section) Consistent with their enabling acts, P.L.1978,
2 c.73 (C.45:1-14 et seq.) and the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.), the boards and others set forth
4 in section 2 of P.L.1978, c.73 (C.45:1-15) are authorized to adopt
5 rules and regulations to serve the public health, safety and welfare.

6
7 9. Section 12 of P.L.1978, c.73 (C.45:1-25) is amended to read as
8 follows:

9 12. Any person **【violating】** who engages in any conduct in
10 violation of any provision of an act or regulation administered by a
11 board shall, in addition to any other sanctions provided herein, be
12 liable to a civil penalty of not more than **【\$2,500.00】** \$10,000 for the
13 first **【offense】** violation and not more than **【\$5,000.00】** \$20,000 for
14 the second and each subsequent **【offense】** violation. For the purpose
15 of construing this section, each **【transaction or statutory】** act in
16 violation of any provision of an act or regulation administered by a
17 board shall constitute a separate **【offense; provided, however, a**
18 **second or subsequent offense shall not be deemed to exist unless】**
19 violation and shall be deemed a second or subsequent violation under
20 the following circumstances:

21 (1) an administrative or court order has been entered in a prior,
22 separate and independent proceeding;

23 (2) the person is found within a single proceeding to have
24 committed more than one violation of any provision of an act or
25 regulation administered by a board; or

26 (3) the person is found within a single proceeding to have
27 committed separate violations of any provision of more than one act
28 or regulation administered by a board.

29 **b.** In lieu of an administrative proceeding or an action in the
30 Superior Court, the Attorney General may bring an action in the name
31 of any board for the collection or enforcement of civil penalties for the
32 violation of any provision of an act or regulation administered by such
33 board. Such action may be brought in summary manner pursuant to
34 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) and the rules of
35 court governing actions for the collection of civil penalties in the
36 municipal court where the offense occurred. Process in such action
37 may be by summons or warrant and in the event that the defendant in
38 such action fails to answer such action, the court shall, upon finding
39 an unlawful act or practice to have been committed by the defendant,
40 issue a warrant for the defendant's arrest in order to bring such person
41 before the court to satisfy the civil penalties imposed. In any action
42 commenced pursuant to this section, the court may order restored to
43 any person in interest any moneys or property acquired by means of an
44 unlawful act or practice.

45 **c.** Any action alleging the unlicensed practice of a profession or
46 occupation shall be brought pursuant to this section or, where

1 injunctive relief is sought, by an action commenced in the Superior
2 Court. In any action brought pursuant to this act, a board or the court
3 may order the payment of costs for the use of the State, including, but
4 not limited to, costs of investigation, expert witness fees and costs,
5 attorney fees and costs, and transcript costs.

6 (cf: P.L.1991, c.91, s.449)

7

8 10. Section 17 of P.L.1973, c.19 (C.45:9A-17) is amended to read
9 as follows:

10 17. The Director of the Division of Consumer Affairs shall have the
11 power **【upon】** after notice and opportunity for a hearing to revoke,
12 suspend, or refuse to renew any license, temporary license or
13 certificate of endorsement issued pursuant to this act **【for the**
14 following reasons:

15 a. Being convicted of an offense involving moral turpitude. The
16 record of such conviction, or certified copy thereof from the clerk of
17 the court where such conviction occurred or by the judge of such
18 court, shall be sufficient evidence to warrant revocation or suspension.

19 b. By securing a license or certificate under this act through fraud
20 or deceit.

21 c. For unethical conduct, ignorance, neglect, incompetence or
22 inefficiency in the conduct of his practice. Incompetence shall include
23 but not be limited to the improper or unnecessary fitting of a hearing
24 aid. For the purposes of this act unethical conduct shall mean:

25 (1) The obtaining of any fee or the making of any sale by fraud or
26 misrepresentation.

27 (2) Employing directly or indirectly any suspended or unlicensed
28 person to perform any work covered by this act.

29 (3) Using or causing or promoting the use of any advertising
30 matter, promotional literature, testimonial, guarantee, warranty, label,
31 brand, insignia or any other representation, however disseminated or
32 published, which, is misleading, deceiving, improbable or untruthful.

33 (4) Advertising a particular model, type or kind of hearing aid for
34 sale when purchasers or prospective purchasers responding to the
35 advertisement cannot purchase or are dissuaded from purchasing the
36 advertised model, type or kind where it is established that the purpose
37 of the advertisement is to obtain prospects for the sale of a different
38 model, type or kind than that advertised.

39 (5) Representing that the services or advice of a person licensed to
40 practice medicine will be used or made available in the selection,
41 fitting, adjustment, maintenance or repair of hearing aids when that is
42 not true, or using the word "doctor," "clinic," or like words,
43 abbreviations or symbols which tend to connote the medical profession
44 when such use is not accurate.

45 (6) Habitual intemperance.

46 (7) Gross immorality.

A3576 BAGGER

1 (8) Permitting another to use his license or certificate.

2 (9) To imitate or simulate the trademarks, trade names, brands or
3 labels of competitors, with the capacity and tendency or effect of
4 misleading or deceiving purchasers or prospective purchasers; or

5 (10) To use any trade name, corporate name, trademark, or other
6 trade designation, which has the capacity and tendency or effect of
7 misleading or deceiving purchasers or prospective purchasers as to the
8 name, nature, or origin of any product of the industry, or of any
9 material used therein, or which is false, deceptive, or misleading in any
10 other material respect.

11 (11) To directly or indirectly give, or offer to give, or permit or
12 cause to be given money or anything of value to any person who
13 advises another in a professional capacity as an inducement to
14 influence him or have him influence others to purchase or contract to
15 purchase products sold or offered for sale by a hearing aid dispenser,
16 or to influence persons to refrain from dealing in the products of
17 competitors.

18 d. For practicing while knowingly suffering with a contagious or
19 infectious disease.

20 e. For the use of a false name or alias in his practice.

21 f. For violating any of the provisions of this act or rules or
22 regulations promulgated hereunder] as provided by section 8 of
23 P.L.1978, c.73 (C.45:1-21).

24 (cf: P.L.1973, c.19, s.17)

25

26 11. R.S.45:14-12 is amended to read as follows:

27 45:14-12. [The board may refuse an application for examination
28 or may suspend or revoke the certificate of a registered pharmacist or
29 a registered assistant pharmacist for any of the following causes:
30 When the application or registration is shown to have been obtained
31 by misrepresentation or fraudulent means or when the applicant or
32 registrant is guilty of chronic or persistent inebriety, or has been
33 adjudged guilty of violating any State or Federal law or any law of the
34 District of Columbia or of any territory of the United States relating
35 to the practice of pharmacy, or relating to the dispensing of drugs, or
36 has been convicted of a crime involving moral turpitude, or has
37 impersonated an applicant for registration before the board or has been
38 convicted of knowingly, intentionally or fraudulently adulterating or
39 causing to be adulterated drugs, chemicals or medicinal preparations
40 or has sold or caused to be sold adulterated drugs, chemicals or
41 medicinal preparations knowing, or having reason to know, that same
42 were adulterated, or has procured or attempted to procure registration
43 for another by misrepresentation or fraudulent means, and the board
44 shall refuse an application for examination or suspend or revoke the
45 certificate of a registered pharmacist or a registered assistant
46 pharmacist when the applicant or registrant is shown to be addicted

1 to the use of narcotic drugs, or has been convicted of violating any law
2 of this or any other state or of the United States relating to narcotic
3 drugs or has been adjudicated an incompetent, or is shown to have any
4 abnormal physical or mental condition which threatens the safety of
5 persons to whom said applicant or registrant might sell or dispense
6 prescriptions, drugs, chemicals, medicinal preparations or devices or
7 for whom he might manufacture, prepare or package, or supervise the
8 manufacturing, preparation or packaging of prescriptions, drugs,
9 chemicals, medicinal preparations or devices.】 In addition to the
10 provisions of section 8 of P.L.1978, c.73 (C.45:1-21), the board may
11 refuse an application for examination or may suspend or revoke the
12 certificate of a registered pharmacist or a registered assistant
13 pharmacist upon proof satisfactory to the board that such registered
14 pharmacist or such registered assistant pharmacist is guilty of grossly
15 unprofessional conduct and the following acts are hereby declared to
16 constitute grossly unprofessional conduct for the purpose of this act:

17 a. Paying rebates or entering into an agreement for payment of
18 rebates to any physician, dentist or other person for the recommending
19 of the services of any person.

20 b. The providing or causing to be provided to a physician, dentist,
21 veterinarian or other persons authorized to prescribe, prescription
22 blanks or forms bearing the pharmacist's or pharmacy's name, address
23 or other means of identification.

24 c. (Deleted by amendment.)

25 d. The claiming of professional superiority in the compounding or
26 filling of prescriptions or in any manner implying professional
27 superiority which may reduce public confidence in the ability,
28 character or integrity of other pharmacists.

29 e. Fostering the interest of one group of patients at the expense of
30 another which compromises the quality or extent of professional
31 services or facilities made available.

32 f. The distribution of premiums or rebates of any kind whatever in
33 connection with the sale of drugs and medications provided, however,
34 that trading stamps and similar devices shall not be considered to be
35 rebates for the purposes of this chapter and provided further that
36 discounts, premiums and rebates may be provided in connection with
37 the sale of drugs and medications to any person who is 62 years of
38 age or older. Before a certificate shall be refused, suspended or
39 revoked, the accused person shall be furnished with a copy of the
40 complaint and given a hearing before the board. Any person whose
41 certificate is so suspended or revoked shall be deemed an unregistered
42 person during the period of such suspension or revocation, and as such
43 shall be subject to the penalties prescribed in this chapter, but such
44 person may, at the discretion of the board, have his certificate
45 reinstated at any time without an examination, upon application to the
46 board. Any person to whom a certificate shall be denied by the board

1 or whose certificate shall be suspended or revoked by the board shall
2 have the right to review such action by appeal to the Appellate
3 Division of the Superior Court in lieu of prerogative writ.

4 g. Advertising of prescription drug prices in a manner inconsistent
5 with rules and regulations promulgated by the Director of the Division
6 of Consumer Affairs; provided, however, no such advertising of any
7 drug or substance shall be authorized unless the Commissioner of
8 Health and Senior Services shall have determined that such
9 advertising is not harmful to public health, safety and welfare.

10 (cf: P.L.1977, c.240, s.2)

11
12 12. The following sections of law are repealed:

13 Section 1 of P.L.1975, c.382 (C.45:1-13);

14 section 21 of P.L.1983, c.420 (C.45:3B-21);

15 R.S.45:5-8;

16 R.S.45:6-7;

17 R.S.45:6-22;

18 section 12 of P.L.1979, c.46 (C.45:6-59);

19 R.S.45:9-16;

20 section 13 of P.L.1947, c.262 (C.45:11-35);

21 R.S.45:12-11;

22 section 30 of P.L.1966, c.313 (C.45:14-12.2);

23 R.S.45:14-35; and

24 section 24 of P.L.1966, c.282 (C.45:14B-24).

25
26 13. This act shall take effect immediately.

27
28
29 STATEMENT

30
31 In 1978, the Legislature enacted P.L.1978, c.73 (C.45:1-14 et seq.),
32 known as the "uniform enforcement act," to provide uniform
33 enforcement and sanctions in regard to the various professions and
34 occupations licensed pursuant to Title 45 of the Revised Statutes. The
35 purpose of that act was to establish consistent standards for licensee
36 conduct. One provision of that act declared that all inconsistent acts
37 were superseded and repealed. A year later, the Legislature enacted
38 P.L.1979, c.432, which specifically repealed most of the sections of
39 Title 45 that had been generally repealed by the uniform enforcement
40 act. However, a few sections which seem to have been affected by the
41 general repealer were nevertheless left in place. Each of these sections
42 establishes grounds for revocation of the license to practice a
43 particular health care profession.

44 The continuation of these license revocation provisions creates
45 uncertainty in the law on this subject. Conflicting arguments can be
46 made that the grounds for the revocation of a professional license are

1 those in section 8 of the uniform enforcement act, in the applicable
2 unrepealed section, or in both. While the effect of this uncertainty in
3 the law is reduced by the similarity in grounds for revocation in the
4 uniform enforcement act and most of the individual provisions, it still
5 should be corrected.

6 This bill repeals those unrepealed sections and amends section 8 of
7 the uniform enforcement act to include provisions which are currently
8 not in that section but which are in the sections being repealed.

9 In addition, some of the statutes establishing the various
10 professional and occupational boards do not specifically grant those
11 boards the authority to make regulations. This bill cures that defect.

12 The grounds for refusal to admit to examination or denial,
13 suspension or revocation of a certificate, registration or license
14 pursuant to the uniform enforcement act are modified and expanded
15 as follows: the grounds of gross negligence, gross malpractice or
16 gross incompetence are modified by adding "which damaged or
17 endangered the life, health, welfare, safety or property of any person;"
18 the grounds of having been convicted of a crime of moral turpitude or
19 relating adversely to a board regulated activity is expanded to include
20 being convicted of, or engaging in acts constituting, a crime or offense
21 involving moral turpitude or relating adversely to a board regulated
22 activity; grounds in regard to the "New Jersey Insurance Fraud
23 Prevention Act" are expanded to include violations of that act pursuant
24 to civil or administrative proceedings; and grounds which currently
25 exist, such as impairment because of the use of drugs or alcohol, the
26 dispensing of controlled dangerous substances indiscriminately,
27 permitting an unlicensed person to perform an act for which a license
28 or certificate of registration or certification is required and advertising
29 fraudulently in any manner are added or specified.

30 The bill provides that a regulatory board may enter a temporary
31 order suspending or limiting any license issued by the board pending
32 a hearing on an administrative complaint, if a duly verified application
33 of the Attorney General provides proof of a conviction of a court of
34 competent jurisdiction for a crime or offense involving moral turpitude
35 or relating adversely to the regulated profession or occupation.

36 The Director of the Division of Consumer Affairs is given the
37 authority to establish the administrative fees charged by the regulatory
38 boards.

39 The bill establishes uniform renewal procedures for professional and
40 occupational licenses (certification, registration) by boards located in
41 the Division of Consumer Affairs. If a licensee does not renew his
42 license prior to its expiration date, the holder may renew it within 30
43 days of its expiration date by submitting a renewal application and
44 paying a renewal fee and late fee. Any license not renewed within 30
45 days of its expiration shall be suspended without a hearing and any
46 licensee who continues to practice with an expired license shall be

1 engaged in an unlicensed practice. A license suspended pursuant to
2 this provision may be reinstated within five years following its date of
3 expiration upon submission of a renewal application and payment of
4 an additional reinstatement fee. An applicant seeking reinstatement
5 after five years must submit an application, successfully complete an
6 examination and pay an additional reinstatement fee. In addition,
7 renewal applications shall provide the applicant with the option of
8 either active or inactive renewal. An applicant electing to renew as
9 inactive shall not engage in his profession or occupation, but may
10 apply to the board for active status if the applicant presents
11 satisfactory proof that he maintained proficiency by completing the
12 continuing education hours or credits required for renewal.

13 The bill authorizes the professional and occupational boards to
14 adopt rules and regulations to serve the public health, safety and
15 welfare.

16 The bill increases the penalty provisions of the uniform enforcement
17 act. A first violation is subject to a penalty of not more than \$10,000
18 (currently \$2,500) and a second or subsequent violation is subject to
19 a penalty of not more than \$20,000 (currently \$5,000). In an action
20 alleging the unlicensed practice of a profession or occupation, a board
21 or the court may order the payment of costs for use of the State and
22 those costs may include costs of investigation, expert witness fees and
23 costs, attorney fees and costs and transcript costs.

24 Some of the changes to the law provided by this bill are
25 recommended by the New Jersey Law Revision Commission pursuant
26 to its report entitled "Report and Recommendations Relating to Title
27 45 -- Professions and Occupations."

ASSEMBLY CONSUMER AFFAIRS AND REGULATED
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3576

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1999

The Assembly Consumer Affairs and Regulated Professions Committee reports favorably Assembly Bill No. 3576.

In 1978, the Legislature enacted P.L.1978, c.73 (C.45:1-14 et seq.), known as the "uniform enforcement act," to provide uniform enforcement and sanctions in regard to the various professions and occupations licensed pursuant to Title 45 of the Revised Statutes. The purpose of that act was to establish consistent standards for licensee conduct. One provision of that act declared that all inconsistent acts were superseded and repealed. A year later, the Legislature enacted P.L.1979, c.432, which specifically repealed most of the sections of Title 45 that had been generally repealed by the uniform enforcement act. However, a few sections which seem to have been affected by the general repealer were nevertheless left in place. Each of these sections establishes grounds for revocation of the license to practice a particular health care profession.

The continuation of these license revocation provisions creates uncertainty in the law on this subject. Conflicting arguments can be made that the grounds for the revocation of a professional license are those in section 8 of the uniform enforcement act, in the applicable unrepealed section, or in both. While the effect of this uncertainty in the law is reduced by the similarity in grounds for revocation in the uniform enforcement act and most of the individual provisions, it still should be corrected.

This bill repeals those unrepealed sections and amends section 8 of the uniform enforcement act to include provisions which are currently not in that section but which are in the sections being repealed.

In addition, some of the statutes establishing the various professional and occupational boards do not specifically grant those boards the authority to make regulations. This bill cures that defect.

The grounds for refusal to admit to examination or denial, suspension or revocation of a certificate, registration or license pursuant to the uniform enforcement act are modified and expanded as follows: the grounds of gross negligence, gross malpractice or gross incompetence are modified by adding "which damaged or endangered the life, health, welfare, safety or property of any person;"

the grounds of having been convicted of a crime of moral turpitude or relating adversely to a board regulated activity is expanded to include being convicted of, or engaging in acts constituting, a crime or offense involving moral turpitude or relating adversely to a board regulated activity; grounds in regard to the "New Jersey Insurance Fraud Prevention Act" are expanded to include violations of that act pursuant to civil or administrative proceedings; and grounds which currently exist, such as impairment because of the use of drugs or alcohol, the dispensing of controlled dangerous substances indiscriminately, permitting an unlicensed person to perform an act for which a license or certificate of registration or certification is required and advertising fraudulently in any manner are added or specified.

The bill provides that a regulatory board may enter a temporary order suspending or limiting any license issued by the board pending a hearing on an administrative complaint, if a duly verified application of the Attorney General provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation.

The Director of the Division of Consumer Affairs is given the authority to establish the administrative fees charged by the regulatory boards.

The bill establishes uniform renewal procedures for professional and occupational licenses (certification, registration) by boards located in the Division of Consumer Affairs. If a licensee does not renew his license prior to its expiration date, the holder may renew it within 30 days of its expiration date by submitting a renewal application and paying a renewal fee and late fee. Any license not renewed within 30 days of its expiration shall be suspended without a hearing and any licensee who continues to practice with an expired license shall be engaged in an unlicensed practice. A license suspended pursuant to this provision may be reinstated within five years following its date of expiration upon submission of a renewal application and payment of an additional reinstatement fee. The bill also requires a professional or occupational licensing board to send a license renewal notice to a holder at least 60 days prior to expiration of the license, and if the board fails to do so, the holder would not be subject to any monetary penalty or fine for failure to renew. An applicant seeking reinstatement after five years must submit an application, successfully complete an examination and pay an additional reinstatement fee. In addition, renewal applications shall provide the applicant with the option of either active or inactive renewal. An applicant electing to renew as inactive shall not engage in his profession or occupation, but may apply to the board for active status if the applicant presents satisfactory proof that he maintained proficiency by completing the continuing education hours or credits required for renewal.

The bill authorizes the professional and occupational boards to adopt rules and regulations to serve the public health, safety and welfare.

The bill increases the penalty provisions of the uniform enforcement act. A first violation is subject to a penalty of not more than \$10,000 (currently \$2,500) and a second or subsequent violation is subject to a penalty of not more than \$20,000 (currently \$5,000). In an action alleging the unlicensed practice of a profession or occupation, a board or the court may order the payment of costs for use of the State and those costs may include costs of investigation, expert witness fees and costs, attorney fees and costs and transcript costs.

Some of the changes to the law provided by this bill are recommended by the New Jersey Law Revision Commission pursuant to its report entitled "Report and Recommendations Relating to Title 45 -- Professions and Occupations."