

45:1-33

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 83

NJSA: 45:1-33 ("Health Care Professional Responsibility and Reporting Enhancement Act")

BILL NO: S1804 (Substituted for A3533)

SPONSOR(S): Vitale and others

DATE INTRODUCED: September 27, 2004

COMMITTEE: **ASSEMBLY:** Health and Human Services
SENATE: Health, Human Services and Senior Citizens

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 14, 2005

SENATE: October 25, 2004

DATE OF APPROVAL: May 3, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)

S1804

[SPONSOR'S STATEMENT:](#) (Begins on page 18 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

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

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A3533

[SPONSOR'S STATEMENT:](#) (Begins on page 19 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Codey OKs health field background checks," 5-4-2005 The Times, p.A18

"Reporting required for medical misconduct," 5-4-2005 New York Times, p.B7

"Codey enacts 'no more killer nurses' measure," 5-4-2005 Star Ledger, p.19

"Law plugs loopholes found in Cullen cases," 5-4-2005 Courier News, p.A1

IS 5/21/07

§§1,9-14, 17,19 -
C.45:1-33 to
45:1-41
§§2,15,16 -
C.26:2H-12.2b to
26:2H-12.2d
§19 - Note to
26:2H-5
§20 - Repealer
§21 - Note to all
sections

P.L. 2005, CHAPTER 83, *approved May 3, 2005*
Senate, No. 1804 (*First Reprint*)

1 **AN ACT** concerning health care professionals and revising parts of
2 statutory law.

3

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

6

7 1. This act shall be known and may be cited as the "Health Care
8 Professional Responsibility and Reporting Enhancement Act."

9

10 2. (New section) a. A health care entity shall notify the division in
11 writing if a health care professional who is employed by, under
12 contract to render professional services to, or has privileges granted
13 by, that health care entity, or who provides such services pursuant to
14 an agreement with a health care services firm or staffing registry:

15 (1) for reasons relating to the health care professional's
16 ¹impairment,¹ incompetency¹[,] or¹ professional misconduct ¹[or
17 impairment], which incompetency or professional misconduct relates
18 adversely to patient care or safety¹: (a) has full or partial privileges
19 summarily or temporarily revoked or suspended, or permanently
20 reduced, suspended or revoked; (b) has been removed from the list of
21 eligible employees of a health services firm or staffing registry; (c) has
22 been discharged from the staff; or (d) has had a contract to render
23 professional services terminated or rescinded;

24 (2) has conditions or limitations placed on the exercise of clinical
25 privileges or practice within the health care entity for reasons relating
26 to the health care professional's ¹impairment,¹ incompetency¹[,] or¹
27 professional misconduct or ¹[impairment], which incompetency or
28 professional misconduct relates adversely to patient care or safety¹,
29 including, but not limited to, second opinion requirements, non-routine
30 concurrent or retrospective review of admissions or care, non-routine
31 supervision by one or more members of the staff, or the completion of

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 SHH committee amendments adopted September 27, 2004.

1 remedial education or training;

2 (3) voluntarily resigns from the staff if¹: (a)¹ the health care entity
3 is reviewing the health care professional's patient care or reviewing
4 whether¹, based upon its reasonable belief, the health care
5 professional's conduct demonstrates an impairment or incompetence
6 or¹ is unprofessional ¹[or demonstrates an impairment or
7 incompetence,]¹, which incompetence or unprofessional conduct
8 relates adversely to patient care or safety;¹ or ¹[if] (b)¹ the health care
9 entity, through any member of the medical or administrative staff, has
10 expressed an intention to do ¹[so] such a review¹;

11 (4) voluntarily relinquishes any partial privilege¹ or authorization¹
12 to perform a specific procedure if: ¹(a)¹ the health care entity is
13 reviewing the health care professional's patient care or reviewing
14 whether ¹, based upon its reasonable belief,¹ the health care
15 professional's conduct demonstrates an impairment or incompetence
16 or¹ is unprofessional ¹[or the health care professional has
17 demonstrated an impairment or incompetence] , which incompetence
18 or unprofessional conduct relates adversely to patient care or safety¹;
19 or ¹(b)¹ the health care entity, through any member of the medical or
20 administrative staff, has expressed an intention to do ¹[so] such a
21 review¹;

22 (5) while under, or subsequent to, a review by the health care
23 entity of the health care professional's patient care or professional
24 conduct,¹ is granted a leave of absence for reasons relating to a
25 physical, mental or emotional condition or drug or alcohol use which
26 impairs the health care professional's ability to practice with
27 reasonable skill and safety, except that no report is required for
28 pregnancy-related leaves of absence or if the health care professional
29 has sought assistance from a professional assistance or intervention
30 program approved or designated by the division or a board to provide
31 confidential oversight of the health care professional and is following
32 the treatment regimen or monitoring as that program requires; or

33 (6) is a party to a medical malpractice liability suit, to which the
34 health care entity is also a party, and in which there is a settlement,
35 judgment or arbitration award.

36 ¹As used in this subsection, incompetence, professional misconduct
37 and unprofessional conduct shall not include personal conduct, such
38 as tardiness, insubordination or other similar behavior, which does not
39 relate to patient care or safety.¹

40 b. A health care entity shall notify the division in writing if it is in
41 possession of information that indicates that a health care professional
42 has failed to comply with a request to seek assistance from a
43 professional assistance or intervention program approved or
44 designated by the division or a board to provide confidential oversight
45 of the health care professional, or has failed to follow the treatment
46 regimen or monitoring program required by that program to assure

1 that the health care professional's physical, mental or emotional
2 condition or drug or alcohol use does not impair the health care
3 professional's ability to practice with reasonable skill and safety.

4 c. A health care entity shall notify the division in writing if any
5 health care professional who has been the subject of a report pursuant
6 to this section, has had conditions or limitations on the exercise of
7 clinical privileges or practice within the health care entity altered, or
8 privileges restored, or has resumed exercising clinical privileges that
9 had been voluntarily relinquished.

10 d. ¹In the case of a health care professional who is providing
11 services at a health care entity pursuant to an agreement with a health
12 care services firm or staffing agency and is the subject of a notice
13 pursuant to this section, the health care entity shall, when it submits a
14 notice to the division concerning that health care professional, provide
15 a copy of the notice to the health care services firm or staffing agency.

16 e.¹ The form of notification shall be prescribed by the
17 Commissioner or Health and Senior Services, in consultation with the
18 Commissioner of Human Services in the case of psychiatric facilities
19 and developmental centers, and shall contain such information as may
20 be required by the division and shall be made within seven days of the
21 date of the action, settlement, judgment or award.

22 ¹[e.] f.¹ A health care entity which fails to provide such notice to
23 the division or fails to cooperate with a request for information by the
24 division, the board or the Medical Practitioner Review Panel
25 established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8)
26 shall be subject to such penalties as the Department of Health and
27 Senior Services may determine pursuant to sections 13 and 14 of
28 P.L.1971, c.136 (C.26:2H-13 and 26:2H-14).

29 ¹[f.] g.¹ A health care entity, or any employee thereof, which
30 provides information to the division, the board, the Medical
31 Practitioner Review Panel, ¹a health care services firm or staffing
32 agency.¹ or the Department of Health and Senior Services, in good
33 faith and without malice, regarding a health care professional pursuant
34 to the provisions of this section or section 3 of P.L.1989, c.300
35 (C.26:2H-12.2a), is not liable for civil damages in any cause of action
36 arising out of the provision or reporting of the information.

37 ¹[g.] h.¹ A health care entity shall provide the health care
38 professional who is the subject of a notice pursuant to paragraphs (1),
39 (2), (4) and (5) of subsection a. of this section and subsection c. of this
40 section with a copy of the notice provided to the division, when the
41 health care entity submits the notice to the division.

42 ¹[h.] i.¹ For the purposes of this section, section 3 of P.L.1989,
43 c.300 (C.26:2H-12.2a) and section 15 of P.L. , c. (C.)(pending
44 before the Legislature as this bill):

45 "Board" means a professional and occupational licensing board
46 within the Division of Consumer Affairs in the Department of Law and

1 Public Safety which licenses or otherwise authorizes a health care
2 professional to practice a health care profession.

3 “Division” means the Division of Consumer Affairs in the
4 Department of Law and Public Safety.

5 “Health care entity” means a health care facility licensed pursuant
6 to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance
7 organization authorized to operate pursuant to P.L.1973, c.337
8 (C.26:2J-1 et seq.), a carrier which offers a managed care plan
9 regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or
10 county psychiatric hospital, a State developmental center, a staffing
11 registry, and a home care services agency as defined in section 1 of
12 P.L.1947, c.262 (C.45:11-23).

13 “Health care professional” means a person licensed or otherwise
14 authorized pursuant to Title 45 or Title 52 of the Revised Statutes to
15 practice a health care profession that is regulated by the Director of
16 the Division of Consumer Affairs or by one of the following boards:
17 the State Board of Medical Examiners, the New Jersey Board of
18 Nursing, the New Jersey State Board of Dentistry, the New Jersey
19 State Board of Optometrists, the New Jersey State Board of
20 Pharmacy, the State Board of Chiropractic Examiners, the
21 Acupuncture Examining Board, the State Board of Physical Therapy,
22 the State Board of Respiratory Care, the Orthotics and Prosthetics
23 Board of Examiners, the State Board of Psychological Examiners, the
24 State Board of Social Work Examiners, the State Board of Veterinary
25 Medical Examiners, the State Board of Examiners of Ophthalmic
26 Dispensers and Ophthalmic Technicians, the Audiology and Speech-
27 Language Pathology Advisory Committee, the State Board of
28 Marriage and Family Therapy Examiners, the Occupational Therapy
29 Advisory Council and the Certified Psychoanalysts Advisory
30 Committee. “Health care professional” also includes a nurse aide and
31 a personal care assistant certified by the Department of Health and
32 Senior Services.

33

34 3. Section 3 of P.L.1989, c.300 (C.26:2H-12.2a) is amended to
35 read as follows:

36 3. a. A health care [facility or health maintenance
37 organization] entity shall maintain all records of all
38 ¹documented¹ complaints ¹of events related to patient care¹ about,
39 and disciplinary proceedings or actions against, a ¹[practitioner
40 or]¹ health care professional¹ [, as applicable,]¹ who is employed by
41 or has an affiliation with the health care [facility or health maintenance
42 organization] entity. The health care [facility or health maintenance
43 organization] entity shall retain the information for a period of seven
44 years and make the records, including any information the health care
45 [facility or health maintenance organization] entity has pertaining to

1 records maintained on the ¹[practitioner or]¹ health care professional
2 prior to the effective date of P.L.1989, c.300 (C.45:9-19.4 et al.),
3 available to [the State Board of Medical Examiners] the division, the
4 board which licenses or otherwise authorizes the ¹[practitioner or]¹
5 health care professional to practice, the Medical Practitioner Review
6 Panel established pursuant to section 8 of P.L.1989, c.300
7 (C.45:9-19.8) and the Department of Health and Senior Services, as
8 applicable, upon request.

9 b. A health care [facility or health maintenance organization] entity
10 shall maintain for a period of four years all records and source data
11 relating to its mortality, morbidity, complication, infection and
12 readmission [experience] and shall make the records available to the
13 division, the board which licenses or otherwise authorizes the
14 ¹[practitioner or]¹ health care professional, the review panel and the
15 Department of Health and Senior Services, as applicable, upon
16 request.

17 c. A health care [facility or health maintenance organization] entity
18 which fails to maintain the records required pursuant to this section
19 shall be subject to such penalties as the Department of Health and
20 Senior Services shall determine pursuant to sections 13 and 14 of
21 P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16 of
22 P.L.1997, c.192 (C.26:2S-16), or the director shall determine pursuant
23 to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.
24 (cf: P.L.1989, c.300, s.3)

25
26 4. Section 1 of P.L.2002, c.104 (C. 45:1-28) is amended to read as
27 follows:

28 1. As used in this act:

29 "Applicant" means an applicant for licensure or other authorization
30 to engage in a health care profession.

31 "Board" means a professional and occupational licensing board
32 within the Division of Consumer Affairs in the Department of Law and
33 Public Safety.

34 "Director" means the Director of the Division of Consumer Affairs
35 in the Department of Law and Public Safety.

36 "Division" means the Division of Consumer Affairs in the
37 Department of Law and Public Safety.

38 "Health care professional" means a health care professional who is
39 licensed or otherwise authorized, pursuant to Title 45 or Title 52 of
40 the Revised Statutes, to practice a health care profession that is
41 regulated by one of the following boards or by the Director of the
42 Division of Consumer Affairs: the State Board of Medical Examiners,
43 the New Jersey Board of Nursing, the New Jersey State Board of
44 Dentistry, the New Jersey State Board of Optometrists, the New
45 Jersey State Board of Pharmacy [of the State of New Jersey], the
46 State Board of Chiropractic Examiners, the Acupuncture Examining

1 Board, the State Board of Physical Therapy, the State Board of
2 Respiratory Care, the Orthotics and Prosthetics Board of Examiners,
3 the State Board of Psychological Examiners, the State Board of Social
4 Work Examiners, the State Board of Veterinary Medical Examiners,
5 the State Board of Examiners of Ophthalmic Dispensers and
6 Ophthalmic Technicians, the Audiology and Speech-Language
7 Pathology Advisory Committee, the State Board of Marriage and
8 Family Therapy Examiners, the Occupational Therapy Advisory
9 Council or the Certified Psychoanalysts Advisory Committee.

10 Health care professional shall not include a nurse aide or personal
11 care assistant who is required to undergo a criminal history record
12 background check pursuant to section 2 of P.L.1997, c.100
13 (C.26:2H-83) or a homemaker-home health aide who is required to
14 undergo a criminal history record background check pursuant to
15 section 7 of P.L.1997, c.100 (C.45:11-24.3).

16 "Licensee" means an individual who has been issued a license or
17 other authorization to practice a health care profession.

18 (cf: P.L.2002, c.104, s.1)

19

20 5. Section 2 of P.L.2002, c.104 (C.45:1-29) is amended to read as
21 follows:

22 2. a. A professional and occupational licensing board within the
23 Division of Consumer Affairs in the Department of Law and Public
24 Safety or the director who regulates the practice of a health care
25 professional, as applicable, shall not issue an initial license or other
26 authorization to practice a health care profession that is regulated by
27 that board or the director to any applicant therefor unless the board or
28 director, as applicable, first determines, consistent with section 8 of
29 P.L.1978, c.73 (C.45:1-21), that no criminal history record
30 information exists on file in the Federal Bureau of Investigation,
31 Identification Division, or in the State Bureau of Identification in the
32 Division of State Police, which may disqualify the applicant from being
33 licensed or otherwise authorized to practice as a health care
34 professional.

35 b. A board or the director, as applicable, shall not renew or, if
36 renewed, shall revoke a license or other authorization to practice a
37 health care profession that is regulated by that board or the director of
38 any applicant therefor unless the board or director determines,
39 consistent with section 8 of P.L.1978, c.73 (C.45:1-21), that no
40 criminal history record information exists on file in the Federal Bureau
41 of Investigation, Identification Division, or in the State Bureau of
42 Identification in the Division of State Police, which may provide
43 grounds for the refusal to renew the license or other authorization to
44 practice as a health care professional.

45 The director shall establish, by regulation, a schedule of dates by
46 which the requirements of this subsection shall be implemented, so that

1 all licensees will have been required to submit to a criminal history
2 record background check beginning no later than four years after the
3 effective date of P.L. , c. (C.)(pending before the Legislature as this
4 bill).

5 The director may, in an emergent circumstance, temporarily waive
6 the requirement to undergo a criminal history record background
7 check as a condition of renewal of a license or other authorization to
8 practice a health care profession.

9 (cf: P.L.2002, c.104, s.2)

10
11 6. Section 3 of P.L.2002, c.104 (C.45:1-30) is amended to read as
12 follows:

13 3. a. An applicant or licensee who is required to undergo a
14 criminal history record background check pursuant to section 2 of
15 [this act] P.L.2002, c.104 (C.45:1-29) shall submit to the director that
16 individual's name, address and fingerprints taken on standard
17 fingerprint cards, or through any equivalent means, by a State or
18 municipal law enforcement agency or by a private entity under
19 contract with the State. The director is authorized to exchange
20 fingerprint data with and receive criminal history record information
21 from the Federal Bureau of Investigation and the Division of State
22 Police for use in making the determinations required pursuant to this
23 act.

24 b. Upon receipt of the criminal history record information for an
25 applicant or licensee from the Federal Bureau of Investigation or the
26 Division of State Police, the director shall immediately notify the
27 board, as applicable.

28 c. If an applicant refuses to consent to, or cooperate in, the
29 securing of a criminal history record background check, the board or
30 director, as applicable, shall not issue a license or other authorization
31 to practice a health care profession to the applicant and shall notify the
32 applicant of that denial.

33 d. If a licensee refuses to consent to, or cooperate in, the securing
34 of a criminal history record background check as required during the
35 licensure or other authorization renewal process, the board or director,
36 as applicable, shall refuse to renew the license or other authorization
37 of the licensee, without a hearing, and shall notify the licensee of that
38 denial.

39 e. A licensee who:

40 (1) has permitted a license or other authorization to lapse or whose
41 license or other authorization has been suspended, revoked or
42 otherwise has had licensure or other authorization privileges restricted,
43 and

44 (2) has not already submitted to a criminal history record
45 background check,

46 shall be required to submit fingerprints as part of the licensure or other

1 authorization reinstatement process. If a reinstatement applicant
2 refuses to consent to, or cooperate in, the securing of a criminal
3 history record background check as required during the reinstatement
4 process, the board or director, as applicable, shall automatically deny
5 reinstatement of the license or other authorization, without a hearing,
6 and shall notify the licensee of that denial.

7 (P.L.2002, c.104, s.3)

8

9 7. Section 4 of P.L.2002, c.104 (C. 45:1-31) is amended to read as
10 follows:

11 4. An applicant or licensee shall be required to assume the cost of
12 the criminal history record background check conducted pursuant to
13 sections 1 through 3 of [this act] P.L.2002, c.104 (C.45:1-28 through
14 45:1-30) and section 14 of P.L.1997, c.100 (C.53:1-20.9a), in
15 accordance with procedures determined by regulation of the director.
16 (cf: P.L.2002, c.104, s.4)

17

18 8. Section 9 of P.L.1989, c.300 (C.45:9-19.9) is amended to read
19 as follows:

20 9. a. The review panel shall receive:

21 (1) Notice from a health care [facility or health maintenance
22 organization] entity, provided through the Division of Consumer
23 Affairs in the Department of Law and Public Safety, pursuant to
24 section [1 of P.L.1983, c.247 (C.26:2H-12.2)] 2 of P.L. , c. (C.)
25 (pending before the Legislature as this bill);

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

31 b. The review panel may receive referrals from the board which
32 may include complaints alleging professional misconduct,
33 incompetence, negligence or impairment of a practitioner from other
34 health care providers and consumers of health care.

35 c. Upon receipt of a notice or complaint pursuant to this section,
36 the review panel shall promptly investigate the information received
37 and obtain any additional information that may be necessary in order
38 to make a recommendation to the board. The review panel may seek
39 the assistance of a consultant or other knowledgeable person, as
40 necessary, in making its recommendation. The review panel may
41 request the board or the Attorney General to exercise investigative
42 powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the
43 conduct of its investigation.

44 (1) If the review panel has reasonable cause to believe that a
45 practitioner represents an imminent danger to his patients, the review
46 panel shall immediately notify the State Board of Medical Examiners

1 and the Attorney General and recommend the initiation of an
2 application before the board to temporarily suspend or otherwise limit
3 the practitioner's license pending further proceedings by the review
4 panel or the board.

5 If the board temporarily suspends or otherwise limits the license,
6 the board shall notify each [licensed] health care [facility and health
7 maintenance organization] entity with which the practitioner is
8 affiliated and every practitioner in the State with which the practitioner
9 is directly associated in his private practice.

10 (2) A practitioner who is the subject of an investigation shall be
11 promptly notified of the investigation, pursuant to procedures adopted
12 by regulation of the board that give consideration to the health, safety
13 and welfare of the practitioner's patients and to the necessity for a
14 confidential or covert investigation by the review panel. At the panel's
15 request or upon a good cause showing by the practitioner an informal
16 hearing shall be scheduled before the review panel or a subcommittee
17 of at least three review panel members, in accordance with regulations
18 adopted by the board. The hearing shall be transcribed and the
19 practitioner shall be entitled to a copy of the transcript, at his own
20 expense. A practitioner who presents information to the review panel
21 is entitled to be represented by counsel.

22 (3) Notwithstanding any provision of this section to the contrary,
23 in any case in which the board determines to conduct an investigation
24 of a practitioner who it has reasonable cause to believe represents an
25 imminent danger to his patients, the board may direct the review panel
26 to provide the board with its files pertaining to that practitioner and
27 may direct the review panel to promptly terminate its investigation of
28 that practitioner without making a recommendation pursuant to
29 subsection d. of this section.

30 Upon request of the review panel, the State Board of Medical
31 Examiners shall provide the review panel with any information
32 contained in the board's files concerning a practitioner.

33 d. Upon completion of its review, the review panel shall prepare a
34 report recommending one of the following dispositions:

35 (1) Recommend to the State Board of Medical Examiners that the
36 matter be referred to the Attorney General for the initiation of
37 disciplinary action against the practitioner who is the subject of the
38 notice or complaint, pursuant to section 8 or 9 of P.L.1978, c.73
39 (C.45:1-21 or 45:1-22);

40 (2) Defer making a recommendation to the board pending the
41 outcome of litigation or a health care [facility or health maintenance
42 organization] entity disciplinary proceeding, if there is no evidence
43 that the practitioner's professional conduct may jeopardize or
44 improperly risk the health, safety or life of a patient;

45 (3) Refer the practitioner to the appropriate licensed health care
46 practitioner treatment program recognized by the State Board of

1 Medical Examiners and promptly notify the medical director of the
2 board of the referral;

3 (4) Refer the practitioner to the appropriate focused education
4 program recognized by the State Board of Medical Examiners and
5 promptly notify the educational director of the board of the referral;
6 or

7 (5) Find that no further action is warranted at this time.

8 e. A member of the State Board of Medical Examiners shall not
9 participate by voting or any other action in any matter before the
10 board on which the board member has participated previously as a
11 review panel member.

12 f. The State Board of Medical Examiners may affirm, reject or
13 modify any disposition of the review panel. After its consideration of
14 the panel recommendation the board shall notify the practitioner who
15 has been the subject of a notice or complaint of the review panel's
16 recommendation and the board's determination.

17 g. Nothing in this section shall be construed to prevent or limit the
18 State Board of Medical Examiners, the Director of the Division of
19 Consumer Affairs in the Department of Law and Public Safety or the
20 Attorney General from taking any other action permitted by law
21 against a practitioner who is the subject of an investigation by the
22 review panel.

23 h. For the purposes of this section, "practitioner" means a person
24 licensed to practice: medicine and surgery under chapter 9 of Title 45
25 of the Revised Statutes or a medical resident or intern; or podiatry
26 under chapter 5 of Title 45 of the Revised Statutes.

27 i. As used in this section, "focused education program" means an
28 individualized and systematic process to assess the educational needs
29 of a licensee based on scientific analysis, technical skill and
30 interpersonal evaluation as they relate to the licensee's professional
31 practice, and the institution of remedial education and any supervision,
32 monitoring or limitations of the licensee.

33 (cf: P.L.2001, c.307, s.8)

34

35 9. (New section) As used in sections 9 through 14 and 16 and 17
36 of P.L. , c. (C.)(pending before the Legislature as this bill):

37 "Board" means a professional and occupational licensing board
38 within the Division of Consumer Affairs in the Department of Law and
39 Public Safety which licenses or otherwise authorizes a health care
40 professional to practice a health care profession.

41 "Division" means the Division of Consumer Affairs in the
42 Department of Law and Public Safety;

43 "Health care entity" means a health care facility licensed pursuant
44 to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance
45 organization authorized to operate pursuant to P.L.1973, c.337
46 (C.26:2J-1 et seq.), a carrier which offers a managed care plan

1 regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or
2 county psychiatric hospital, a State developmental center, a staffing
3 registry, and a home care services agency as defined in section 1 of
4 P.L.1947, c.262 (C.45:11-23).

5 "Health care professional" means a person licensed or otherwise
6 authorized pursuant to Title 45 or Title 52 of the Revised Statutes to
7 practice a health care profession that is regulated by the Director of
8 the Division of Consumer Affairs or by one of the following boards:
9 the State Board of Medical Examiners, the New Jersey Board of
10 Nursing, the New Jersey State Board of Dentistry, the New Jersey
11 State Board of Optometrists, the New Jersey State Board of
12 Pharmacy, the State Board of Chiropractic Examiners, the
13 Acupuncture Examining Board, the State Board of Physical Therapy,
14 the State Board of Respiratory Care, the Orthotics and Prosthetics
15 Board of Examiners, the State Board of Psychological Examiners, the
16 State Board of Social Work Examiners, the State Board of Veterinary
17 Medical Examiners, the State Board of Examiners of Ophthalmic
18 Dispensers and Ophthalmic Technicians, the Audiology and Speech-
19 Language Pathology Advisory Committee, the State Board of
20 Marriage and Family Therapy Examiners, the Occupational Therapy
21 Advisory Council and the Certified Psychoanalysts Advisory
22 Committee.

23 "Licensee" means an individual who has been issued a license or
24 other authorization to practice a health care profession.

25 "Review panel" means the Medical Practitioner Review Panel
26 established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8).

27

28 10. (New section) A ¹health care entity, health care professional or
29 any other¹ person who provides to the division, a board or the review
30 panel, in good faith and without malice, any information concerning an
31 act by a health care professional which the person has reasonable cause
32 to believe involves misconduct that may be subject to disciplinary
33 action by the division, board or review panel, as applicable, or any
34 information relating to such conduct requested by the division, board
35 or review panel in the exercise of its statutory responsibilities or which
36 may be required by statute, shall not be liable for civil damages in any
37 cause of action arising out of the provision of such information or
38 services.

39

40 11. (New section) Any information provided to the division or a
41 board concerning the conduct of a health care professional, pursuant
42 to section 2 of P.L. , c. (C.)(pending before the Legislature as this
43 bill), section 5 of P.L.1978, c.73 (C.45:1-18) or any other provision
44 of law, shall be treated as confidential pending final disposition of the
45 inquiry or investigation, except for that information required to be
46 shared with the Attorney General, Department of Health and Senior

1 Services or any other government agency.

2 If the result of the inquiry or investigation is a finding of no basis
3 for disciplinary action, the information shall remain confidential,
4 except that the board or division, as applicable, may release the
5 information to a government agency to facilitate the discharge of its
6 public responsibilities.

7 The provisions of this section shall not apply to information that the
8 division, or its designated agent, is required to include in a physician's
9 profile pursuant to P.L.2003, c.96 (C.45:9-22.21 et seq.).

10

11 12. (New section) a. A health care professional shall promptly
12 notify the division if that health care professional is in possession of
13 information which reasonably indicates that another health care
14 professional has demonstrated an impairment, gross incompetence or
15 unprofessional conduct which would present an imminent danger to an
16 individual patient or to the public health, safety or welfare. A health
17 care professional who fails to so notify the division is subject to
18 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
19 of P.L.1978, c.73 (C.45:1-21, 45:1-22 and 45:1-25).

20 b. A health care professional shall be deemed to have satisfied the
21 reporting requirement concerning another health care professional's
22 impairment by promptly providing notice to the division, the board or
23 a professional assistance or intervention program approved or
24 designated by the division or a board to provide confidential oversight
25 of the licensee.

26 c. ¹ (1)¹ There shall be no private right of action against a health
27 care professional for failure to comply with the notification
28 requirements of this section.

29 ¹(2) There shall be no private right of action against a health care
30 entity if a health care professional who is employed by, under contract
31 to render professional services to, or has privileges granted by, that
32 health care entity, or who provides such services pursuant to an
33 agreement with a health care services firm or staffing registry, fails to
34 comply with the notification requirements of this section.¹

35 d. A health care professional who provides notification to the
36 division, board or review panel, in good faith and without malice,
37 about a health care professional who is impaired or grossly
38 incompetent or who has demonstrated unprofessional conduct,
39 pursuant to this section, is not liable for civil damages to any person
40 in any cause of action arising out of the notification.

41 e. Notwithstanding the provisions of this section to the contrary,
42 a health care professional is not required to provide notification
43 pursuant to this section about an impaired or incompetent health care
44 professional if the health care professional's knowledge of the other
45 health care professional's impairment or incompetence was obtained as
46 a result of rendering treatment to that health care professional.

1 13. (New section) a. Upon receipt of notice from a health care
2 entity, or any employee thereof, pursuant to section 2 of P.L. ,c. (C.)
3 (pending before the Legislature as this bill), notice from a health care
4 professional pursuant to section 12 of P.L. , c. (C.)(pending before
5 the Legislature as this bill) or information concerning the conduct of
6 a health care professional pursuant to section 10 of P.L. , c. (C.)
7 (pending before the Legislature as this bill), the division shall promptly
8 notify the board that issued the license or other authorization to
9 practice to the person to whom the notice relates.

10 The division or board, as applicable, shall initiate an investigation
11 concerning the information received and obtain any additional
12 information that may be necessary in order to determine if disciplinary
13 charges should be pursued or if an application to temporarily suspend
14 or otherwise limit the health care professional's license or other
15 authorization to practice should be initiated.

16 b. The division or the board may seek the assistance of a consultant
17 or other knowledgeable person in evaluating the information and may
18 request the board or the Attorney General to exercise investigative
19 powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the
20 conduct of its investigation.

21 c. If the Attorney General files charges based on information
22 derived from the notice from a health care entity or if the board
23 revokes or permanently or temporarily suspends or otherwise limits
24 the license or other authorization to practice of a health care
25 professional, the board shall notify each health care entity with which
26 the health care professional is affiliated.

27
28 14. (New section) Any health care professional seeking to become
29 employed by, enter into a contract to render professional services to,
30 or obtain privileges at, a health care entity, or provide professional
31 services pursuant to an agreement with a health care services firm or
32 staffing registry, who engages in fraud, misrepresentation or deception
33 in the application or credentialing process shall be subject to
34 disciplinary proceedings, pursuant to section 8 of P.L.1978, c.73
35 (C.45:1-21).

36
37 15. (New section) a. A health care entity, upon the inquiry of
38 another health care entity, shall truthfully¹:

39 (1)¹ disclose whether, within the seven years preceding the inquiry,
40 it provided any notice to the division pursuant to section 2 of P.L. , c.
41 (C.)(pending before the Legislature as this bill), or to the review
42 panel, as required by section 3 of P.L.1989, c.300 (C.26:2H-12.2a),
43 with respect to the health care professional about whom the inquiry
44 has been made, providing a copy of the form of notification and any
45 supporting documentation that was provided to the division, a
46 professional or occupational licensing board in the Division of

1 Consumer Affairs in the Department of Law and Public Safety, or the
2 review panel¹; and

3 (2) provide information about a current or former employee's job
4 performance as it relates to patient care, as provided in this section,
5 and, in the case of a former employee, the reason for the employee's
6 separation¹.

7 b. ¹For the purposes of this section, "job performance" shall relate
8 to the suitability of the employee for re-employment at a health care
9 entity, and the employee's skills and abilities as they relate to suitability
10 for future employment at a health care entity. Information about a
11 current or former employee's job performance pursuant to this
12 paragraph shall be based on the employee's performance evaluation,
13 and provided to another health care entity only if: (1) the evaluation
14 has been signed by the evaluator and shared with the employee; (2) the
15 employee has had the opportunity to respond; and (3) the employee's
16 response, if any, has been taken into consideration when providing the
17 information to another health care entity.

18 Job performance as it relates to patient care shall not include the
19 current or former employee's participation in labor activities pursuant
20 to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

21 c.¹ A health care entity, or any employee designated by the entity,
22 which¹, pursuant to this section,¹ provides information ¹in good faith
23 and without malice¹ to another health care entity ¹[, in good faith and
24 without malice, concerning a health care professional pursuant to this
25 section] concerning a health care professional, including information
26 about a current or former employee's job performance as it relates to
27 patient care¹, is not liable for civil damages in any cause of action
28 arising out of the provision or reporting of the information.

29 ¹[c.] d.¹ A health care entity which fails to truthfully disclose
30 information to another health care entity making an inquiry pursuant
31 to this section or fails to cooperate with such request for information
32 by the other health care entity shall be subject to such penalties as the
33 Department of Health and Senior Services may determine pursuant to
34 section 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and
35 section 16 of P.L.1997, c.192 (C.26:2S-16), or the director shall
36 determine pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as
37 applicable.

38
39 16. (New section) a. A health care professional employed by or
40 practicing at a health care entity shall promptly notify the person at the
41 entity, who is designated by that entity, if the health care professional
42 is in possession of information which reasonably indicates that another
43 health care professional who is employed by or practicing at the entity
44 has demonstrated an impairment, gross incompetence or
45 unprofessional conduct which would present an imminent danger to an
46 individual patient or to the public health, safety or welfare.

1 b. A health care professional who provides information pursuant
2 to this section, in good faith and without malice, shall not be liable for
3 civil damages in any cause of action arising out of the provision of
4 such information.

5 c. The reporting requirement in this section shall be in addition to
6 the reporting requirement for health care professionals established in
7 section 12 of P.L. , c. (C.)(pending before the Legislature as this
8 bill).

9
10 17. (New section) a. The Division of Consumer Affairs in the
11 Department of Law and Public Safety shall employ a full-time Health
12 Care Professional Information Clearinghouse Coordinator to assist the
13 Director of the Division of Consumer Affairs in compiling and
14 disseminating to the appropriate licensing board or other applicable
15 entity the information reported to the division by health care entities
16 and professionals pursuant to this act and such other information as
17 specified by the director.

18 b. The director shall provide that the professional and occupational
19 licensing boards which license or otherwise authorize a health care
20 professional to practice a health care profession with professional and
21 administrative staff as may be needed to carry out the purposes of this
22 act.

23
24 18. Section 3 of P.L.2003, c.96 (C.45:9-22.23) is amended to read
25 as follows:

26 3. a. The following information shall be included for each profile
27 of a physician, podiatrist or optometrist, as applicable:

28 (1) Name of all medical or optometry schools attended and dates
29 of graduation;

30 (2) Graduate medical or optometry education, including all
31 internships, residencies and fellowships;

32 (3) Year first licensed;

33 (4) Year first licensed in New Jersey;

34 (5) Location of the physician's, podiatrist's or optometrist's office
35 practice site or sites, as applicable;

36 (6) A description of any criminal convictions for crimes of the first,
37 second, third or fourth degree within the most recent 10 years. For
38 the purposes of this paragraph, a person shall be deemed to be
39 convicted of a crime if the individual pleaded guilty or was found or
40 adjudged guilty by a court of competent jurisdiction. The description
41 of criminal convictions shall not include any convictions that have been
42 expunged. The following statement shall be included with the
43 information about criminal convictions: "Information provided in this
44 section may not be comprehensive. Courts in New Jersey are required
45 by law to provide information about criminal convictions to the State
46 Board of Medical Examiners (or the New Jersey State Board of

1 Optometrists).";

2 (7) A description of any final board disciplinary actions within the
3 most recent 10 years, except that any such disciplinary action that is
4 being appealed shall be identified;

5 (8) A description of any final disciplinary actions by appropriate
6 licensing boards in other states within the most recent 10 years, except
7 that any such disciplinary action that is being appealed shall be
8 identified. The following statement shall be included with the
9 information about disciplinary actions in other states: "Information
10 provided in this section may not be comprehensive. The State Board
11 of Medical Examiners (or the New Jersey State Board of
12 Optometrists) receives information about disciplinary actions in other
13 states from physicians (or optometrists) themselves and outside
14 sources.";

15 (9) In the case of physicians and podiatrists, a description of: the
16 revocation or involuntary restriction of privileges at a health care
17 facility for reasons related to the practitioner's competence or
18 misconduct or impairment taken by a health care facility's governing
19 body or any other official of the health care facility after procedural
20 due process has been afforded; the resignation from or nonrenewal of
21 medical staff membership at the health care facility for reasons related
22 to the practitioner's competence or misconduct or impairment; or the
23 restriction of privileges at a health care facility taken in lieu of or in
24 settlement of a pending disciplinary case related to the practitioner's
25 competence or misconduct or impairment. Only those cases that have
26 occurred within the most recent 10 years and that were reported by the
27 health care facility pursuant to section [1 of P.L.1983, c.247
28 (C.26:2H-12.2)] 2 of P.L. , c. (C.)(pending before the Legislature
29 as this bill) shall be included in the profile; and

30 (10) All medical malpractice court judgments and all medical
31 malpractice arbitration awards reported to the applicable board, in
32 which a payment has been awarded to the complaining party during the
33 most recent five years, and all settlements of medical malpractice
34 claims reported to the board, in which a payment is made to the
35 complaining party within the most recent five years, as follows:

36 (a) Pending medical malpractice claims shall not be included in the
37 profile and information on pending medical malpractice claims shall
38 not be disclosed to the public;

39 (b) A medical malpractice judgment that is being appealed shall be
40 so identified;

41 (c) The context in which the payment of a medical malpractice
42 claim occurs shall be identified by categorizing the number of
43 judgments, arbitration awards and settlements against the physician,
44 podiatrist or optometrist into three graduated categories: average,
45 above average and below average number of judgments, arbitration
46 awards and settlements. These groupings shall be arrived at by

1 comparing the number of an individual physician's, podiatrist's or
2 optometrist's medical malpractice judgments, arbitration awards and
3 settlements to the experience of other physicians, podiatrists or
4 optometrists within the same speciality. In addition to any information
5 provided by a physician, podiatrist or optometrist, an insurer or
6 insurance association authorized to issue medical malpractice liability
7 insurance in the State shall, at the request of the division, provide data
8 and information necessary to effectuate this subparagraph; and

9 (d) The following statement shall be included with the information
10 concerning medical malpractice judgments, arbitration awards and
11 settlements: "Settlement of a claim and, in particular, the dollar
12 amount of the settlement may occur for a variety of reasons, which do
13 not necessarily reflect negatively on the professional competence or
14 conduct of the physician (or podiatrist or optometrist). A payment in
15 settlement of a medical malpractice action or claim should not be
16 construed as creating a presumption that medical malpractice has
17 occurred."

18 b. If requested by a physician, podiatrist or optometrist, the
19 following information shall be included in a physician's, podiatrist's or
20 optometrist's profile:

21 (1) Names of the hospitals where the physician, podiatrist or
22 optometrist has privileges;

23 (2) Appointments of the physician or podiatrist to medical school
24 faculties, or the optometrist to optometry school faculties, within the
25 most recent 10 years;

26 (3) Information regarding any board certification granted by a
27 specialty board or other certifying entity recognized by the American
28 Board of Medical Specialties, the American Osteopathic Association
29 or the American Board of Podiatric Medicine or by any other national
30 professional organization that has been demonstrated to have
31 comparable standards;

32 (4) Information regarding any translating services that may be
33 available at the physician's, podiatrist's or optometrist's office practice
34 site or sites, as applicable, or languages other than English that are
35 spoken by the physician, podiatrist or optometrist;

36 (5) Information regarding whether the physician, podiatrist or
37 optometrist participates in the Medicaid program or accepts
38 assignment under the Medicare program;

39 (6) Information regarding the medical insurance plans in which the
40 physician, podiatrist or optometrist is a participating provider;

41 (7) Information concerning the hours during which the physician,
42 podiatrist or optometrist conducts his practice; and

43 (8) Information concerning accessibility of the practice site or sites,
44 as applicable, to persons with disabilities.

45 The following disclaimer shall be included with the information
46 supplied by the physician, podiatrist or optometrist pursuant to this

1 subsection: "This information has been provided by the physician (or
2 podiatrist or optometrist) but has not been independently verified by
3 the State Board of Medical Examiners (or the New Jersey State Board
4 of Optometrists) or the Division of Consumer Affairs."

5 If the physician, podiatrist or optometrist includes information
6 regarding medical insurance plans in which the practitioner is a
7 participating provider, the following disclaimer shall be included with
8 that information: "This information may be subject to change. Contact
9 your health benefits plan to verify if the physician (or podiatrist or
10 optometrist) currently participates in the plan."

11 c. Before a profile is made available to the public, each physician,
12 podiatrist or optometrist shall be provided with a copy of his profile.
13 The physician, podiatrist or optometrist shall be given 30 calendar
14 days to correct a factual inaccuracy that may appear in the profile and
15 so advise the Division of Consumer Affairs or its designated agent;
16 however, upon receipt of a written request that the division or its
17 designated agent deems reasonable, the physician, podiatrist or
18 optometrist may be granted an extension of up to 15 calendar days to
19 correct a factual inaccuracy and so advise the division or its designated
20 agent.

21 d. If new information or a change in existing information is
22 received by the division concerning a physician, podiatrist or
23 optometrist, the physician, podiatrist or optometrist shall be provided
24 with a copy of the proposed revision and shall be given 30 calendar
25 days to correct a factual inaccuracy and to return the corrected
26 information to the division or its designated agent.

27 e. The profile and any revisions thereto shall not be made available
28 to the public until after the review period provided for in this section
29 has lapsed.

30 (P.L.2004, c.115, s.6)

31

32 19. a. The Director of the Division of Consumer Affairs in the
33 Department of Law and Public Safety shall adopt rules and regulations
34 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
35 (C.52:14B-1 et seq.) to carry out the purposes of this act.

36 b. The Commissioner of Health and Senior Services shall adopt
37 rules and regulations pursuant to the "Administrative Procedure Act,"
38 P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this
39 act.

40

41 20. The following are repealed:

42 Section 1 of P.L.1983, c.247 (C.26:2H-12.2);

43 Section 1 of P.L.1983, c.248 (C.45:9-19.1);

44 Section 3 of P.L.1983, c.248 (C.45:9-19.3); and

45 Section 5 of P.L.1989, c.300 (C.45:9-19.5).

1 21. This act shall take effect on the 180th day after enactment, but
2 the Commissioner of Health and Senior Services and the Director of
3 the Division of Consumer Affairs in the Department of Law and Public
4 Safety may take such anticipatory administrative action in advance as
5 shall be necessary for the implementation of the act.

6

7

8

9

10 "Health Care Professional Responsibility and Reporting Enhancement
11 Act."

SENATE, No. 1804

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED SEPTEMBER 27, 2004

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator WALTER J. KAVANAUGH

District 16 (Morris and Somerset)

SYNOPSIS

"Health Care Professional Responsibility and Reporting Enhancement Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning health care professionals and revising parts of
2 statutory law.

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

6
7 1. This act shall be known and may be cited as the "Health Care
8 Professional Responsibility and Reporting Enhancement Act."

9
10 2. (New section) a. A health care entity shall notify the division
11 in writing if a health care professional who is employed by, under
12 contract to render professional services to, or has privileges granted
13 by, that health care entity, or who provides such services pursuant to
14 an agreement with a health care services firm or staffing registry:

15 (1) or reasons relating to the health care professional's
16 incompetency, professional misconduct or impairment: (a) has full or
17 partial privileges summarily or temporarily revoked or suspended, or
18 permanently reduced, suspended or revoked; (b) has been removed
19 from the list of eligible employees of a health services firm or staffing
20 registry; (c) has been discharged from the staff; or (d) has had a
21 contract to render professional services terminated or rescinded;

22 (2) has conditions or limitations placed on the exercise of clinical
23 privileges or practice within the health care entity for reasons relating
24 to the health care professional's incompetency, professional
25 misconduct or impairment, including, but not limited to, second
26 opinion requirements, non-routine concurrent or retrospective review
27 of admissions or care, non-routine supervision by one or more
28 members of the staff, or the completion of remedial education or
29 training;

30 (3) voluntarily resigns from the staff if the health care entity is
31 reviewing the health care professional's patient care or reviewing
32 whether the health care professional's conduct is unprofessional or
33 demonstrates an impairment or incompetence, or if the health care
34 entity, through any member of the medical or administrative staff, has
35 expressed an intention to do so;

36 (4) voluntarily relinquishes any partial privilege to perform a
37 specific procedure if: the health care entity is reviewing the health care
38 professional's patient care or reviewing whether the health care
39 professional's conduct is unprofessional or the health care professional
40 has demonstrated an impairment or incompetence; or the health care
41 entity, through any member of the medical or administrative staff, has
42 expressed an intention to do so;

43 (5) is granted a leave of absence for reasons relating to a physical,

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.

1 mental or emotional condition or drug or alcohol use which impairs
2 the health care professional's ability to practice with reasonable skill
3 and safety, except that no report is required for pregnancy-related
4 leaves of absence or if the health care professional has sought
5 assistance from a professional assistance or intervention program
6 approved or designated by the division or a board to provide
7 confidential oversight of the health care professional and is following
8 the treatment regimen or monitoring as that program requires; or

9 (6) is a party to a medical malpractice liability suit, to which the
10 health care entity is also a party, and in which there is a settlement,
11 judgment or arbitration award.

12 b. A health care entity shall notify the division in writing if it is in
13 possession of information that indicates that a health care professional
14 has failed to comply with a request to seek assistance from a
15 professional assistance or intervention program approved or
16 designated by the division or a board to provide confidential oversight
17 of the health care professional, or has failed to follow the treatment
18 regimen or monitoring program required by that program to assure
19 that the health care professional's physical, mental or emotional
20 condition or drug or alcohol use does not impair the health care
21 professional's ability to practice with reasonable skill and safety.

22 c. A health care entity shall notify the division in writing if any
23 health care professional who has been the subject of a report pursuant
24 to this section, has had conditions or limitations on the exercise of
25 clinical privileges or practice within the health care entity altered, or
26 privileges restored, or has resumed exercising clinical privileges that
27 had been voluntarily relinquished.

28 d. The form of notification shall be prescribed by the Commissioner
29 or Health and Senior Services, in consultation with the Commissioner
30 of Human Services in the case of psychiatric facilities and
31 developmental centers, and shall contain such information as may be
32 required by the division and shall be made within seven days of the
33 date of the action, settlement, judgment or award.

34 e. A health care entity which fails to provide such notice to the
35 division or fails to cooperate with a request for information by the
36 division, the board or the Medical Practitioner Review Panel
37 established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8)
38 shall be subject to such penalties as the Department of Health and
39 Senior Services may determine pursuant to sections 13 and 14 of
40 P.L.1971, c.136 (C.26:2H-13 and 26:2H-14).

41 f. A health care entity, or any employee thereof, which provides
42 information to the division, the board, the Medical Practitioner Review
43 Panel, or the Department of Health and Senior Services, in good faith
44 and without malice, regarding a health care professional pursuant to
45 the provisions of this section or section 3 of P.L.1989, c.300
46 (C.26:2H-12.2a), is not liable for civil damages in any cause of action

1 arising out of the provision or reporting of the information.

2 g. A health care entity shall provide the health care professional
3 who is the subject of a notice pursuant to paragraphs (1), (2), (4) and
4 (5) of subsection a. of this section and subsection c. of this section
5 with a copy of the notice provided to the division, when the health
6 care entity submits the notice to the division.

7 h. For the purposes of this section, section 3 of P.L.1989, c.300
8 (C.26:2H-12.2a) and section 15 of P.L. , c. (C.)(pending before the
9 Legislature as this bill):

10 "Board" means a professional and occupational licensing board
11 within the Division of Consumer Affairs in the Department of Law and
12 Public Safety which licenses or otherwise authorizes a health care
13 professional to practice a health care profession.

14 "Division" means the Division of Consumer Affairs in the
15 Department of Law and Public Safety.

16 "Health care entity" means a health care facility licensed pursuant
17 to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance
18 organization authorized to operate pursuant to P.L.1973, c.337
19 (C.26:2J-1 et seq.), a carrier which offers a managed care plan
20 regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or
21 county psychiatric hospital, a State developmental center, a staffing
22 registry, and a home care services agency as defined in section 1 of
23 P.L.1947, c.262 (C.45:11-23).

24 "Health care professional" means a person licensed or otherwise
25 authorized pursuant to Title 45 or Title 52 of the Revised Statutes to
26 practice a health care profession that is regulated by the Director of
27 the Division of Consumer Affairs or by one of the following boards:
28 the State Board of Medical Examiners, the New Jersey Board of
29 Nursing, the New Jersey State Board of Dentistry, the New Jersey
30 State Board of Optometrists, the New Jersey State Board of
31 Pharmacy, the State Board of Chiropractic Examiners, the
32 Acupuncture Examining Board, the State Board of Physical Therapy,
33 the State Board of Respiratory Care, the Orthotics and Prosthetics
34 Board of Examiners, the State Board of Psychological Examiners, the
35 State Board of Social Work Examiners, the State Board of Veterinary
36 Medical Examiners, the State Board of Examiners of Ophthalmic
37 Dispensers and Ophthalmic Technicians, the Audiology and Speech-
38 Language Pathology Advisory Committee, the State Board of
39 Marriage and Family Therapy Examiners, the Occupational Therapy
40 Advisory Council and the Certified Psychoanalysts Advisory
41 Committee. "Health care professional" also includes a nurse aide and
42 a personal care assistant certified by the Department of Health and
43 Senior Services.

44

45 3. Section 3 of P.L.1989, c.300 (C.26:2H-12.2a) is amended to
46 read as follows:

1 3. a. A health care [facility or health maintenance
2 organization] entity shall maintain all records of all complaints about,
3 and disciplinary proceedings or actions against, a practitioner or health
4 care professional, as applicable, who is employed by or has an
5 affiliation with the health care [facility or health maintenance
6 organization] entity. The health care [facility or health maintenance
7 organization] entity shall retain the information for a period of seven
8 years and make the records, including any information the health care
9 [facility or health maintenance organization] entity has pertaining to
10 records maintained on the practitioner or health care professional prior
11 to the effective date of P.L.1989, c.300 (C.45:9-19.4 et al.), available
12 to [the State Board of Medical Examiners] the division, the board
13 which licenses or otherwise authorizes the practitioner or health care
14 professional to practice, the Medical Practitioner Review Panel
15 established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8) and
16 the Department of Health and Senior Services, as applicable, upon
17 request.

18 b. A health care [facility or health maintenance
19 organization] entity shall maintain for a period of four years all
20 records and source data relating to its mortality, morbidity,
21 complication, infection and readmission [experience] and shall make
22 the records available to the division, the board which licenses or
23 otherwise authorizes the practitioner or health care professional, the
24 review panel and the Department of Health and Senior Services, as
25 applicable, upon request.

26 c. A health care [facility or health maintenance
27 organization] entity which fails to maintain the records required
28 pursuant to this section shall be subject to such penalties as the
29 Department of Health and Senior Services shall determine pursuant to
30 sections 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14)
31 and section 16 of P.L.1997, c.192 (C.26:2S-16), or the director shall
32 determine pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as
33 applicable.

34 (cf: P.L.1989, c.300, s.3)

35

36 4. Section 1 of P.L.2002, c.104 (C. 45:1-28) is amended to read as
37 follows:

38 1. As used in this act:

39 "Applicant" means an applicant for licensure or other authorization
40 to engage in a health care profession.

41 "Board" means a professional and occupational licensing board
42 within the Division of Consumer Affairs in the Department of Law and
43 Public Safety.

44 "Director" means the Director of the Division of Consumer Affairs
45 in the Department of Law and Public Safety.

1 "Division" means the Division of Consumer Affairs in the
2 Department of Law and Public Safety.

3 "Health care professional" means a health care professional who is
4 licensed or otherwise authorized, pursuant to Title 45 or Title 52 of
5 the Revised Statutes, to practice a health care profession that is
6 regulated by one of the following boards or by the Director of the
7 Division of Consumer Affairs: the State Board of Medical Examiners,
8 the New Jersey Board of Nursing, the New Jersey State Board of
9 Dentistry, the New Jersey State Board of Optometrists, the New
10 Jersey State Board of Pharmacy [of the State of New Jersey], the
11 State Board of Chiropractic Examiners, the Acupuncture Examining
12 Board, the State Board of Physical Therapy, the State Board of
13 Respiratory Care, the Orthotics and Prosthetics Board of Examiners,
14 the State Board of Psychological Examiners, the State Board of Social
15 Work Examiners, the State Board of Veterinary Medical Examiners,
16 the State Board of Examiners of Ophthalmic Dispensers and
17 Ophthalmic Technicians, the Audiology and Speech-Language
18 Pathology Advisory Committee, the State Board of Marriage and
19 Family Therapy Examiners, the Occupational Therapy Advisory
20 Council or the Certified Psychoanalysts Advisory Committee.

21 Health care professional shall not include a nurse aide or personal
22 care assistant who is required to undergo a criminal history record
23 background check pursuant to section 2 of P.L.1997, c.100
24 (C.26:2H-83) or a homemaker-home health aide who is required to
25 undergo a criminal history record background check pursuant to
26 section 7 of P.L.1997, c.100 (C.45:11-24.3).

27 "Licensee" means an individual who has been issued a license or
28 other authorization to practice a health care profession.

29 (cf: P.L.2002, c.104, s.1)

30

31 5. Section 2 of P.L.2002, c.104 (C.45:1-29) is amended to read as
32 follows:

33 2. a. A professional and occupational licensing board within the
34 Division of Consumer Affairs in the Department of Law and Public
35 Safety or the director who regulates the practice of a health care
36 professional, as applicable, shall not issue an initial license or other
37 authorization to practice a health care profession that is regulated by
38 that board or the director to any applicant therefor unless the board or
39 director, as applicable, first determines, consistent with section 8 of
40 P.L.1978, c.73 (C.45:1-21), that no criminal history record
41 information exists on file in the Federal Bureau of Investigation,
42 Identification Division, or in the State Bureau of Identification in the
43 Division of State Police, which may disqualify the applicant from being
44 licensed or otherwise authorized to practice as a health care
45 professional.

46 b. A board or the director, as applicable, shall not renew or, if

1 renewed, shall revoke a license or other authorization to practice a
2 health care profession that is regulated by that board or the director of
3 any applicant therefor unless the board or director determines,
4 consistent with section 8 of P.L.1978, c.73 (C.45:1-21), that no
5 criminal history record information exists on file in the Federal Bureau
6 of Investigation, Identification Division, or in the State Bureau of
7 Identification in the Division of State Police, which may provide
8 grounds for the refusal to renew the license or other authorization to
9 practice as a health care professional.

10 The director shall establish, by regulation, a schedule of dates by
11 which the requirements of this subsection shall be implemented, so that
12 all licensees will have been required to submit to a criminal history
13 record background check beginning no later than four years after the
14 effective date of P.L. , c. (C.)(pending before the Legislature as this
15 bill).

16 The director may, in an emergent circumstance, temporarily waive
17 the requirement to undergo a criminal history record background
18 check as a condition of renewal of a license or other authorization to
19 practice a health care profession.

20 (cf: P.L.2002, c.104, s.2)

21
22 6. Section 3 of P.L.2002, c.104 (C.45:1-30) is amended to read as
23 follows:

24 3. a. An applicant or licensee who is required to undergo a
25 criminal history record background check pursuant to section 2 of
26 [this act] P.L.2002, c.104 (C.45:1-29) shall submit to the director that
27 individual's name, address and fingerprints taken on standard
28 fingerprint cards, or through any equivalent means, by a State or
29 municipal law enforcement agency or by a private entity under
30 contract with the State. The director is authorized to exchange
31 fingerprint data with and receive criminal history record information
32 from the Federal Bureau of Investigation and the Division of State
33 Police for use in making the determinations required pursuant to this
34 act.

35 b. Upon receipt of the criminal history record information for an
36 applicant or licensee from the Federal Bureau of Investigation or the
37 Division of State Police, the director shall immediately notify the
38 board, as applicable.

39 c. If an applicant refuses to consent to, or cooperate in, the
40 securing of a criminal history record background check, the board or
41 director, as applicable, shall not issue a license or other authorization
42 to practice a health care profession to the applicant and shall notify the
43 applicant of that denial.

44 d. If a licensee refuses to consent to, or cooperate in, the securing
45 of a criminal history record background check as required during the
46 licensure or other authorization renewal process, the board or director,

1 as applicable, shall refuse to renew the license or other authorization
2 of the licensee, without a hearing, and shall notify the licensee of that
3 denial.

4 e. A licensee who:

5 (1) has permitted a license or other authorization to lapse or whose
6 license or other authorization has been suspended, revoked or
7 otherwise has had licensure or other authorization privileges restricted,
8 and

9 (2) has not already submitted to a criminal history record
10 background check,

11 shall be required to submit fingerprints as part of the licensure or other
12 authorization reinstatement process. If a reinstatement applicant
13 refuses to consent to, or cooperate in, the securing of a criminal
14 history record background check as required during the reinstatement
15 process, the board or director, as applicable, shall automatically deny
16 reinstatement of the license or other authorization, without a hearing,
17 and shall notify the licensee of that denial.

18 (P.L.2002, c.104, s.3)

19

20 7. Section 4 of P.L.2002, c.104 (C. 45:1-31) is amended to read as
21 follows:

22 4. An applicant or licensee shall be required to assume the cost of
23 the criminal history record background check conducted pursuant to
24 sections 1 through 3 of [this act] P.L.2002, c.104 (C.45:1-28 through
25 45:1-30) and section 14 of P.L.1997, c.100 (C.53:1-20.9a), in
26 accordance with procedures determined by regulation of the director.
27 (cf: P.L.2002, c.104, s.4)

28

29 8. Section 9 of P.L.1989, c.300 (C.45:9-19.9) is amended to read
30 as follows:

31 9. a. The review panel shall receive:

32 (1) Notice from a health care [facility or health maintenance
33 organization] entity, provided through the Division of Consumer
34 Affairs in the Department of Law and Public Safety, pursuant to
35 section [1 of P.L.1983, c.247 (C.26:2H-12.2)] 2 of P.L. , c. (C.)
36 (pending before the Legislature as this bill);

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

42 b. The review panel may receive referrals from the board which
43 may include complaints alleging professional misconduct,
44 incompetence, negligence or impairment of a practitioner from other
45 health care providers and consumers of health care.

46 c. Upon receipt of a notice or complaint pursuant to this section,

1 the review panel shall promptly investigate the information received
2 and obtain any additional information that may be necessary in order
3 to make a recommendation to the board. The review panel may seek
4 the assistance of a consultant or other knowledgeable person, as
5 necessary, in making its recommendation. The review panel may
6 request the board or the Attorney General to exercise investigative
7 powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the
8 conduct of its investigation.

9 (1) If the review panel has reasonable cause to believe that a
10 practitioner represents an imminent danger to his patients, the review
11 panel shall immediately notify the State Board of Medical Examiners
12 and the Attorney General and recommend the initiation of an
13 application before the board to temporarily suspend or otherwise limit
14 the practitioner's license pending further proceedings by the review
15 panel or the board.

16 If the board temporarily suspends or otherwise limits the license,
17 the board shall notify each [licensed] health care [facility and health
18 maintenance organization] entity with which the practitioner is
19 affiliated and every practitioner in the State with which the practitioner
20 is directly associated in his private practice.

21 (2) A practitioner who is the subject of an investigation shall be
22 promptly notified of the investigation, pursuant to procedures adopted
23 by regulation of the board that give consideration to the health, safety
24 and welfare of the practitioner's patients and to the necessity for a
25 confidential or covert investigation by the review panel. At the panel's
26 request or upon a good cause showing by the practitioner an informal
27 hearing shall be scheduled before the review panel or a subcommittee
28 of at least three review panel members, in accordance with regulations
29 adopted by the board. The hearing shall be transcribed and the
30 practitioner shall be entitled to a copy of the transcript, at his own
31 expense. A practitioner who presents information to the review panel
32 is entitled to be represented by counsel.

33 (3) Notwithstanding any provision of this section to the contrary,
34 in any case in which the board determines to conduct an investigation
35 of a practitioner who it has reasonable cause to believe represents an
36 imminent danger to his patients, the board may direct the review panel
37 to provide the board with its files pertaining to that practitioner and
38 may direct the review panel to promptly terminate its investigation of
39 that practitioner without making a recommendation pursuant to
40 subsection d. of this section.

41 Upon request of the review panel, the State Board of Medical
42 Examiners shall provide the review panel with any information
43 contained in the board's files concerning a practitioner.

44 d. Upon completion of its review, the review panel shall prepare a
45 report recommending one of the following dispositions:

46 (1) Recommend to the State Board of Medical Examiners that the

1 matter be referred to the Attorney General for the initiation of
2 disciplinary action against the practitioner who is the subject of the
3 notice or complaint, pursuant to section 8 or 9 of P.L.1978, c.73
4 (C.45:1-21 or 45:1-22);

5 (2) Defer making a recommendation to the board pending the
6 outcome of litigation or a health care [facility or health maintenance
7 organization] entity disciplinary proceeding, if there is no evidence
8 that the practitioner's professional conduct may jeopardize or
9 improperly risk the health, safety or life of a patient;

10 (3) Refer the practitioner to the appropriate licensed health care
11 practitioner treatment program recognized by the State Board of
12 Medical Examiners and promptly notify the medical director of the
13 board of the referral;

14 (4) Refer the practitioner to the appropriate focused education
15 program recognized by the State Board of Medical Examiners and
16 promptly notify the educational director of the board of the referral;
17 or

18 (5) Find that no further action is warranted at this time.

19 e. A member of the State Board of Medical Examiners shall not
20 participate by voting or any other action in any matter before the
21 board on which the board member has participated previously as a
22 review panel member.

23 f. The State Board of Medical Examiners may affirm, reject or
24 modify any disposition of the review panel. After its consideration of
25 the panel recommendation the board shall notify the practitioner who
26 has been the subject of a notice or complaint of the review panel's
27 recommendation and the board's determination.

28 g. Nothing in this section shall be construed to prevent or limit the
29 State Board of Medical Examiners, the Director of the Division of
30 Consumer Affairs in the Department of Law and Public Safety or the
31 Attorney General from taking any other action permitted by law
32 against a practitioner who is the subject of an investigation by the
33 review panel.

34 h. For the purposes of this section, "practitioner" means a person
35 licensed to practice: medicine and surgery under chapter 9 of Title 45
36 of the Revised Statutes or a medical resident or intern; or podiatry
37 under chapter 5 of Title 45 of the Revised Statutes.

38 i. As used in this section, "focused education program" means an
39 individualized and systematic process to assess the educational needs
40 of a licensee based on scientific analysis, technical skill and
41 interpersonal evaluation as they relate to the licensee's professional
42 practice, and the institution of remedial education and any supervision,
43 monitoring or limitations of the licensee.

44 (cf: P.L.2001, c.307, s.8)

45

46 9. (New section) As used in sections 9 through 14 and 16 and 17

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

2 "Board" means a professional and occupational licensing board
3 within the Division of Consumer Affairs in the Department of Law and
4 Public Safety which licenses or otherwise authorizes a health care
5 professional to practice a health care profession.

6 "Division" means the Division of Consumer Affairs in the
7 Department of Law and Public Safety;

8 "Health care entity" means a health care facility licensed pursuant
9 to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance
10 organization authorized to operate pursuant to P.L.1973, c.337
11 (C.26:2J-1 et seq.), a carrier which offers a managed care plan
12 regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or
13 county psychiatric hospital, a State developmental center, a staffing
14 registry, and a home care services agency as defined in section 1 of
15 P.L.1947, c.262 (C.45:11-23).

16 "Health care professional" means a person licensed or otherwise
17 authorized pursuant to Title 45 or Title 52 of the Revised Statutes to
18 practice a health care profession that is regulated by the Director of
19 the Division of Consumer Affairs or by one of the following boards:
20 the State Board of Medical Examiners, the New Jersey Board of
21 Nursing, the New Jersey State Board of Dentistry, the New Jersey
22 State Board of Optometrists, the New Jersey State Board of
23 Pharmacy, the State Board of Chiropractic Examiners, the
24 Acupuncture Examining Board, the State Board of Physical Therapy,
25 the State Board of Respiratory Care, the Orthotics and Prosthetics
26 Board of Examiners, the State Board of Psychological Examiners, the
27 State Board of Social Work Examiners, the State Board of Veterinary
28 Medical Examiners, the State Board of Examiners of Ophthalmic
29 Dispensers and Ophthalmic Technicians, the Audiology and Speech-
30 Language Pathology Advisory Committee, the State Board of
31 Marriage and Family Therapy Examiners, the Occupational Therapy
32 Advisory Council and the Certified Psychoanalysts Advisory
33 Committee.

34 "Licensee" means an individual who has been issued a license or
35 other authorization to practice a health care profession.

36 "Review panel" means the Medical Practitioner Review Panel
37 established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8).

38

39 10. (New section) A person who provides to the division, a board
40 or the review panel, in good faith and without malice, any information
41 concerning an act by a health care professional which the person has
42 reasonable cause to believe involves misconduct that may be subject
43 to disciplinary action by the division, board or review panel, as
44 applicable, or any information relating to such conduct requested by
45 the division, board or review panel in the exercise of its statutory
46 responsibilities or which may be required by statute, shall not be liable

1 for civil damages in any cause of action arising out of the provision of
2 such information or services.

3
4 11. (New section) Any information provided to the division or a
5 board concerning the conduct of a health care professional, pursuant
6 to section 2 of P.L. , c. (C.)(pending before the Legislature as this
7 bill), section 5 of P.L.1978, c.73 (C.45:1-18) or any other provision
8 of law, shall be treated as confidential pending final disposition of the
9 inquiry or investigation, except for that information required to be
10 shared with the Attorney General, Department of Health and Senior
11 Services or any other government agency.

12 If the result of the inquiry or investigation is a finding of no basis
13 for disciplinary action, the information shall remain confidential,
14 except that the board or division, as applicable, may release the
15 information to a government agency to facilitate the discharge of its
16 public responsibilities.

17 The provisions of this section shall not apply to information that the
18 division, or its designated agent, is required to include in a physician's
19 profile pursuant to P.L.2003, c.96 (C.45:9-22.21 et seq.).

20
21 12. (New section) a. A health care professional shall promptly
22 notify the division if that health care professional is in possession of
23 information which reasonably indicates that another health care
24 professional has demonstrated an impairment, gross incompetence or
25 unprofessional conduct which would present an imminent danger to an
26 individual patient or to the public health, safety or welfare. A health
27 care professional who fails to so notify the division is subject to
28 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
29 of P.L.1978, c.73 (C.45:1-21, 45:1-22 and 45:1-25).

30 b. A health care professional shall be deemed to have satisfied the
31 reporting requirement concerning another health care professional's
32 impairment by promptly providing notice to the division, the board or
33 a professional assistance or intervention program approved or
34 designated by the division or a board to provide confidential oversight
35 of the licensee.

36 c. There shall be no private right of action against a health care
37 professional for failure to comply with the notification requirements of
38 this section.

39 d. A health care professional who provides notification to the
40 division, board or review panel, in good faith and without malice,
41 about a health care professional who is impaired or grossly
42 incompetent or who has demonstrated unprofessional conduct,
43 pursuant to this section, is not liable for civil damages to any person
44 in any cause of action arising out of the notification.

45 e. Notwithstanding the provisions of this section to the contrary,
46 a health care professional is not required to provide notification

1 pursuant to this section about an impaired or incompetent health care
2 professional if the health care professional's knowledge of the other
3 health care professional's impairment or incompetence was obtained as
4 a result of rendering treatment to that health care professional.

5
6 13. (New section) a. Upon receipt of notice from a health care
7 entity, or any employee thereof, pursuant to section 2 of P.L. ,c. (C.)
8 (pending before the Legislature as this bill), notice from a health care
9 professional pursuant to section 12 of P.L. , c. (C.)(pending before
10 the Legislature as this bill) or information concerning the conduct of
11 a health care professional pursuant to section 10 of P.L. , c. (C.)
12 (pending before the Legislature as this bill), the division shall promptly
13 notify the board that issued the license or other authorization to
14 practice to the person to whom the notice relates.

15 The division or board, as applicable, shall initiate an investigation
16 concerning the information received and obtain any additional
17 information that may be necessary in order to determine if disciplinary
18 charges should be pursued or if an application to temporarily suspend
19 or otherwise limit the health care professional's license or other
20 authorization to practice should be initiated.

21 b. The division or the board may seek the assistance of a consultant
22 or other knowledgeable person in evaluating the information and may
23 request the board or the Attorney General to exercise investigative
24 powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the
25 conduct of its investigation.

26 c. If the Attorney General files charges based on information
27 derived from the notice from a health care entity or if the board
28 revokes or permanently or temporarily suspends or otherwise limits
29 the license or other authorization to practice of a health care
30 professional, the board shall notify each health care entity with which
31 the health care professional is affiliated.

32
33 14. (New section) Any health care professional seeking to become
34 employed by, enter into a contract to render professional services to,
35 or obtain privileges at, a health care entity, or provide professional
36 services pursuant to an agreement with a health care services firm or
37 staffing registry, who engages in fraud, misrepresentation or deception
38 in the application or credentialing process shall be subject to
39 disciplinary proceedings, pursuant to section 8 of P.L.1978, c.73
40 (C.45:1-21).

41
42 15. (New section) a. A health care entity, upon the inquiry of
43 another health care entity, shall truthfully disclose whether, within the
44 seven years preceding the inquiry, it provided any notice to the
45 division pursuant to section 2 of P.L. , c. (C.)(pending before the
46 Legislature as this bill), or to the review panel, as required by section

1 3 of P.L.1989, c.300 (C.26:2H-12.2a), with respect to the health care
2 professional about whom the inquiry has been made, providing a copy
3 of the form of notification and any supporting documentation that was
4 provided to the division, a professional or occupational licensing board
5 in the Division of Consumer Affairs in the Department of Law and
6 Public Safety, or the review panel.

7 b. A health care entity, or any employee designated by the entity,
8 which provides information to another health care entity, in good faith
9 and without malice, concerning a health care professional pursuant to
10 this section, is not liable for civil damages in any cause of action
11 arising out of the provision or reporting of the information.

12 c. A health care entity which fails to truthfully disclose information
13 to another health care entity making an inquiry pursuant to this section
14 or fails to cooperate with such request for information by the other
15 health care entity shall be subject to such penalties as the Department
16 of Health and Senior Services may determine pursuant to section 13
17 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16
18 of P.L.1997, c.192 (C.26:2S-16), or the director shall determine
19 pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.

20

21 16. (New section) a. A health care professional employed by or
22 practicing at a health care entity shall promptly notify the person at the
23 entity, who is designated by that entity, if the health care professional
24 is in possession of information which reasonably indicates that another
25 health care professional who is employed by or practicing at the entity
26 has demonstrated an impairment, gross incompetence or
27 unprofessional conduct which would present an imminent danger to an
28 individual patient or to the public health, safety or welfare.

29 b. A health care professional who provides information pursuant
30 to this section, in good faith and without malice, shall not be liable for
31 civil damages in any cause of action arising out of the provision of
32 such information.

33 c. The reporting requirement in this section shall be in addition to
34 the reporting requirement for health care professionals established in
35 section 12 of P.L. , c. (C.)(pending before the Legislature as this
36 bill).

37

38 17. (New section) a. The Division of Consumer Affairs in the
39 Department of Law and Public Safety shall employ a full-time Health
40 Care Professional Information Clearinghouse Coordinator to assist the
41 Director of the Division of Consumer Affairs in compiling and
42 disseminating to the appropriate licensing board or other applicable
43 entity the information reported to the division by health care entities
44 and professionals pursuant to this act and such other information as
45 specified by the director.

46 b. The director shall provide that the professional and occupational

1 licensing boards which license or otherwise authorize a health care
2 professional to practice a health care profession with professional and
3 administrative staff as may be needed to carry out the purposes of this
4 act.

5

6 18. Section 3 of P.L.2003, c.96 (C.45:9-22.23) is amended to read
7 as follows:

8 3. a. The following information shall be included for each profile
9 of a physician, podiatrist or optometrist, as applicable:

10 (1) Name of all medical or optometry schools attended and dates
11 of graduation;

12 (2) Graduate medical or optometry education, including all
13 internships, residencies and fellowships;

14 (3) Year first licensed;

15 (4) Year first licensed in New Jersey;

16 (5) Location of the physician's, podiatrist's or optometrist's office
17 practice site or sites, as applicable;

18 (6) A description of any criminal convictions for crimes of the first,
19 second, third or fourth degree within the most recent 10 years. For
20 the purposes of this paragraph, a person shall be deemed to be
21 convicted of a crime if the individual pleaded guilty or was found or
22 adjudged guilty by a court of competent jurisdiction. The description
23 of criminal convictions shall not include any convictions that have been
24 expunged. The following statement shall be included with the
25 information about criminal convictions: "Information provided in this
26 section may not be comprehensive. Courts in New Jersey are required
27 by law to provide information about criminal convictions to the State
28 Board of Medical Examiners (or the New Jersey State Board of
29 Optometrists).";

30 (7) A description of any final board disciplinary actions within the
31 most recent 10 years, except that any such disciplinary action that is
32 being appealed shall be identified;

33 (8) A description of any final disciplinary actions by appropriate
34 licensing boards in other states within the most recent 10 years, except
35 that any such disciplinary action that is being appealed shall be
36 identified. The following statement shall be included with the
37 information about disciplinary actions in other states: "Information
38 provided in this section may not be comprehensive. The State Board
39 of Medical Examiners (or the New Jersey State Board of
40 Optometrists) receives information about disciplinary actions in other
41 states from physicians (or optometrists) themselves and outside
42 sources.";

43 (9) In the case of physicians and podiatrists, a description of: the
44 revocation or involuntary restriction of privileges at a health care
45 facility for reasons related to the practitioner's competence or
46 misconduct or impairment taken by a health care facility's governing

1 body or any other official of the health care facility after procedural
2 due process has been afforded; the resignation from or nonrenewal of
3 medical staff membership at the health care facility for reasons related
4 to the practitioner's competence or misconduct or impairment; or the
5 restriction of privileges at a health care facility taken in lieu of or in
6 settlement of a pending disciplinary case related to the practitioner's
7 competence or misconduct or impairment. Only those cases that have
8 occurred within the most recent 10 years and that were reported by the
9 health care facility pursuant to section [1 of P.L.1983, c.247
10 (C.26:2H-12.2)] 2 of P.L. , c. (C.)(pending before the Legislature
11 as this bill) shall be included in the profile; and

12 (10) All medical malpractice court judgments and all medical
13 malpractice arbitration awards reported to the applicable board, in
14 which a payment has been awarded to the complaining party during the
15 most recent five years, and all settlements of medical malpractice
16 claims reported to the board, in which a payment is made to the
17 complaining party within the most recent five years, as follows:

18 (a) Pending medical malpractice claims shall not be included in the
19 profile and information on pending medical malpractice claims shall
20 not be disclosed to the public;

21 (b) A medical malpractice judgment that is being appealed shall be
22 so identified;

23 (c) The context in which the payment of a medical malpractice
24 claim occurs shall be identified by categorizing the number of
25 judgments, arbitration awards and settlements against the physician,
26 podiatrist or optometrist into three graduated categories: average,
27 above average and below average number of judgments, arbitration
28 awards and settlements. These groupings shall be arrived at by
29 comparing the number of an individual physician's, podiatrist's or
30 optometrist's medical malpractice judgments, arbitration awards and
31 settlements to the experience of other physicians, podiatrists or
32 optometrists within the same speciality. In addition to any information
33 provided by a physician, podiatrist or optometrist, an insurer or
34 insurance association authorized to issue medical malpractice liability
35 insurance in the State shall, at the request of the division, provide data
36 and information necessary to effectuate this subparagraph; and

37 (d) The following statement shall be included with the information
38 concerning medical malpractice judgments, arbitration awards and
39 settlements: "Settlement of a claim and, in particular, the dollar
40 amount of the settlement may occur for a variety of reasons, which do
41 not necessarily reflect negatively on the professional competence or
42 conduct of the physician (or podiatrist or optometrist). A payment in
43 settlement of a medical malpractice action or claim should not be
44 construed as creating a presumption that medical malpractice has
45 occurred."

46 b. If requested by a physician, podiatrist or optometrist, the

1 following information shall be included in a physician's, podiatrist's or
2 optometrist's profile:

3 (1) Names of the hospitals where the physician, podiatrist or
4 optometrist has privileges;

5 (2) Appointments of the physician or podiatrist to medical school
6 faculties, or the optometrist to optometry school faculties, within the
7 most recent 10 years;

8 (3) Information regarding any board certification granted by a
9 specialty board or other certifying entity recognized by the American
10 Board of Medical Specialties, the American Osteopathic Association
11 or the American Board of Podiatric Medicine or by any other national
12 professional organization that has been demonstrated to have
13 comparable standards;

14 (4) Information regarding any translating services that may be
15 available at the physician's, podiatrist's or optometrist's office practice
16 site or sites, as applicable, or languages other than English that are
17 spoken by the physician, podiatrist or optometrist;

18 (5) Information regarding whether the physician, podiatrist or
19 optometrist participates in the Medicaid program or accepts
20 assignment under the Medicare program;

21 (6) Information regarding the medical insurance plans in which the
22 physician, podiatrist or optometrist is a participating provider;

23 (7) Information concerning the hours during which the physician,
24 podiatrist or optometrist conducts his practice; and

25 (8) Information concerning accessibility of the practice site or sites,
26 as applicable, to persons with disabilities.

27 The following disclaimer shall be included with the information
28 supplied by the physician, podiatrist or optometrist pursuant to this
29 subsection: "This information has been provided by the physician (or
30 podiatrist or optometrist) but has not been independently verified by
31 the State Board of Medical Examiners (or the New Jersey State Board
32 of Optometrists) or the Division of Consumer Affairs."

33 If the physician, podiatrist or optometrist includes information
34 regarding medical insurance plans in which the practitioner is a
35 participating provider, the following disclaimer shall be included with
36 that information: "This information may be subject to change. Contact
37 your health benefits plan to verify if the physician (or podiatrist or
38 optometrist) currently participates in the plan."

39 c. Before a profile is made available to the public, each physician,
40 podiatrist or optometrist shall be provided with a copy of his profile.
41 The physician, podiatrist or optometrist shall be given 30 calendar
42 days to correct a factual inaccuracy that may appear in the profile and
43 so advise the Division of Consumer Affairs or its designated agent;
44 however, upon receipt of a written request that the division or its
45 designated agent deems reasonable, the physician, podiatrist or
46 optometrist may be granted an extension of up to 15 calendar days to

1 correct a factual inaccuracy and so advise the division or its designated
2 agent.

3 d. If new information or a change in existing information is
4 received by the division concerning a physician, podiatrist or
5 optometrist, the physician, podiatrist or optometrist shall be provided
6 with a copy of the proposed revision and shall be given 30 calendar
7 days to correct a factual inaccuracy and to return the corrected
8 information to the division or its designated agent.

9 e. The profile and any revisions thereto shall not be made available
10 to the public until after the review period provided for in this section
11 has lapsed.

12 (P.L.2004, c.115, s.6)

13

14 19. a. The Director of the Division of Consumer Affairs in the
15 Department of Law and Public Safety shall adopt rules and regulations
16 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
17 (C.52:14B-1 et seq.) to carry out the purposes of this act.

18 b. The Commissioner of Health and Senior Services shall adopt
19 rules and regulations pursuant to the "Administrative Procedure Act,"
20 P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this
21 act.

22

23 20. The following are repealed:

24 Section 1 of P.L.1983, c.247 (C.26:2H-12.2);

25 Section 1 of P.L.1983, c.248 (C.45:9-19.1);

26 Section 3 of P.L.1983, c.248 (C.45:9-19.3); and

27 Section 5 of P.L.1989, c.300 (C.45:9-19.5).

28

29 21. This act shall take effect on the 180th day after enactment, but
30 the Commissioner of Health and Senior Services and the Director of
31 the Division of Consumer Affairs in the Department of Law and Public
32 Safety may take such anticipatory administrative action in advance as
33 shall be necessary for the implementation of the act.

34

35

36

STATEMENT

37

38 This bill revises and strengthens reporting requirements of health
39 care facilities, managed care plans and other employers of health care
40 professionals regarding disciplinary actions taken by the entity against
41 a health care professional for misconduct, improper patient care or
42 other actions related to the health care professional's ability to practice
43 his profession with reasonable skill or safety. Also, all licensed health
44 care professionals will be required to undergo a criminal history record
45 background check as a condition of renewal of their professional
46 license. The bill also requires health care professionals to report

1 information about the impairment or unprofessional conduct of another
2 professional to State authorities and their employer, when applicable,
3 and provides immunity to employers of health care professionals who,
4 upon the inquiry of another employer, truthfully disclose certain
5 information concerning the professional's job performance.

6 Specifically, the bill:

7 -- requires health care facilities, managed care plans, State and
8 county psychiatric hospitals, State developmental centers and home
9 care services agencies and staffing registries (hereafter referred to as
10 "health care entities") to report certain disciplinary actions taken
11 against a health care professional to the Director of the Division of
12 Consumer Affairs, which has jurisdiction over the State's professional
13 and occupational licensing boards.

14 -- defines "health care professional" to mean: a person licensed or
15 otherwise authorized pursuant to Title 45 or Title 52 of the Revised
16 Statutes to practice a health care profession that is regulated by the
17 Director of the Division of Consumer Affairs or by one of the
18 following boards: the State Board of Medical Examiners, the New
19 Jersey Board of Nursing, the New Jersey State Board of Dentistry, the
20 New Jersey State Board of Optometrists, the New Jersey State Board
21 of Pharmacy, the State Board of Chiropractic Examiners, the
22 Acupuncture Examining Board, the State Board of Physical Therapy,
23 the State Board of Respiratory Care, the Orthotics and Prosthetics
24 Board of Examiners, the State Board of Psychological Examiners, the
25 State Board of Social Work Examiners, the State Board of Veterinary
26 Medical Examiners, the State Board of Examiners of Ophthalmic
27 Dispensers and Ophthalmic Technicians, the Audiology and Speech-
28 Language Pathology Advisory Committee, the State Board of
29 Marriage and Family Therapy Examiners, the Occupational Therapy
30 Advisory Council and the Certified Psychoanalysts Advisory
31 Committee. "Health care professional" also includes a nurse aide and
32 personal care assistant certified by the Department of Health and
33 Senior Services.

34 -- amends N.J.S.A.26:2H-12.2a (which requires health care
35 facilities and HMOs to maintain records of complaints and disciplinary
36 actions taken against a physician) to apply to all health care entities
37 regarding all health care professionals.

38 -- amends N.J.S.A.45:1-28 et seq. (which requires health care
39 professionals to undergo criminal history record background checks
40 prior to becoming licensed or otherwise authorized by the State to
41 practice a health care profession) to extend this background check
42 requirement, over a four-year period, to current licensees upon
43 renewal of their license or authorization to practice. Because of the
44 large number of licensees who will have to undergo the background
45 check, the bill provides that the Director of Consumer Affairs shall
46 establish, by regulation, a schedule of dates by which the background

1 check shall be implemented for each of the boards.

2 -- provides that if a licensee refuses to consent to, or cooperate in,
3 the securing of a criminal history record background check as required
4 in this bill, the board or director, as applicable, shall refuse to renew
5 the license or other authorization of the licensee, without a hearing,
6 and shall notify the licensee of that denial.

7 -- provides immunity to a person who provides to the Division of
8 Consumer Affairs, a licensing board or the Medical Practitioner
9 Review Panel, in good faith and without malice, any information
10 concerning an act by a health care professional which the person has
11 reasonable cause to believe involves misconduct that may be subject
12 to disciplinary action by the division, board or review panel, as
13 applicable, or any information relating to such conduct requested by
14 the division, board or review panel in the exercise of its statutory
15 responsibilities or which may be required by statute.

16 -- provides that any information provided to the Division of
17 Consumer Affairs or a licensing board concerning the conduct of a
18 health care professional as required by law, shall be treated as
19 confidential pending final disposition of the inquiry or investigation by
20 the board or division, as applicable, except for that information
21 required to be shared with the Attorney General, Department of Health
22 and Senior Services or any other government agency.

23 -- requires a health care professional to promptly notify the division
24 if that health care professional is in possession of information which
25 reasonably indicates that another health care professional has
26 demonstrated an impairment, gross incompetence or unprofessional
27 conduct which would present an imminent danger to an individual
28 patient or to the public health, safety or welfare. A health care
29 professional shall be deemed to have satisfied the reporting
30 requirement by promptly providing notice to the division, the board or
31 a professional assistance or intervention program approved or
32 designated by the division or a board to provide confidential oversight
33 of the licensee. A health care professional who fails to so notify the
34 division is subject to disciplinary action and civil penalties; however,
35 a health care professional is not required to notify the division about
36 an impaired or incompetent health care professional if the health care
37 professional's knowledge of the other professional's impairment or
38 incompetence was obtained as a result of rendering treatment to that
39 professional. The bill further provides that there shall be no private
40 right of action against a health care professional for failure to comply
41 with these reporting requirements.

42 -- provides immunity to a health care professional who provides
43 notification, in good faith and without malice, about a health care
44 professional who is impaired or grossly incompetent or who has
45 demonstrated unprofessional conduct.

46 -- provides that upon receipt of notice from a health care entity or

1 health care professional concerning the conduct of a health care
2 professional, the Division of Consumer Affairs shall promptly notify
3 the appropriate licensing board. The division or board, as applicable,
4 shall initiate an investigation and obtain any additional information
5 necessary to determine if disciplinary charges should be pursued or if
6 an application to temporarily suspend or otherwise limit the health care
7 professional's license or other authorization to practice should be
8 initiated. If the Attorney General files charges based on information
9 derived from the notice from a health care entity or if the board
10 revokes or permanently or temporarily suspends or otherwise limits
11 the license or other authorization to practice of a health care
12 professional, the board shall notify each health care entity with which
13 the health care professional is affiliated.

14 -- requires that any health care professional seeking to become
15 employed by, enter into a contract to render professional services to
16 or obtain privileges at a health care entity, or provide professional
17 services pursuant to an agreement with a health care services firm or
18 staffing registry, who engages in fraud, misrepresentation or deception
19 in the application or credentialing process shall be subject to
20 disciplinary proceedings, pursuant to N.J.S.A.45:1-21.

21 -- provides that a health care entity, upon the inquiry of another
22 health care entity, shall truthfully disclose whether, within the seven
23 years preceding the inquiry, it provided any notice to the Division of
24 Consumer Affairs or to the review panel, pursuant to law, with respect
25 to the health care professional about whom the inquiry has been made.
26 A health care entity, or any employee designated by the entity, who
27 provides such information to another health care entity, in good faith
28 and without malice, is not liable for damages in any cause of action for
29 providing or reporting the information.

30 -- provides that a health care entity which fails to truthfully disclose
31 information to another health care entity making an inquiry pursuant
32 to this bill or fails to cooperate with the request for information by the
33 other health care entity shall be subject to such penalties as the
34 Department of Health and Senior Services or the Director of
35 Consumer Affairs determines appropriate.

36 -- requires a health care professional employed by or practicing at
37 a health care entity to promptly notify the person at the entity,
38 designated by that entity, if the health care professional is in
39 possession of information which reasonably indicates that another
40 health care professional who is employed by or practicing at the entity
41 has demonstrated an impairment, gross incompetence or
42 unprofessional conduct which would present an imminent danger to an
43 individual patient or to the public health, safety or welfare, and
44 provides immunity to that health care professional for notifying the
45 entity, in good faith and without malice.

46 -- provides that:

1 - the Division of Consumer Affairs shall employ a full-time Health
2 Care Professional Information Clearinghouse Coordinator to assist the
3 Director of the Division of Consumer Affairs in compiling and
4 disseminating to the appropriate licensing board or other applicable
5 entity the information reported to the division by health care entities
6 and professionals pursuant to this bill and such other information as
7 specified by the director; and

8 - the director shall provide the licensing boards with professional
9 and administrative staff as may be needed to carry out the purposes of
10 the bill.

11 Finally, the bill repeals the following sections of law, whose
12 provisions are incorporated in the new sections of the bill:

13 - N.J.S.A.26:2H-12.2, which requires health care facilities and
14 health maintenance organizations to report certain disciplinary actions
15 taken against physicians and podiatrists to the State Board of Medical
16 Examiners (BME);

17 - N.J.S.A.45:9-19.1, which provides immunity to a person who in
18 good faith provides information to the BME concerning the conduct
19 of a physician;

20 - N.J.S.A.45:9-19.3, which provides that information concerning
21 the conduct of a physician is confidential pending final disposition by
22 the BME; and

23 - N.J.S.A.45:9-19.5, which requires physicians to notify the Board
24 of Medical Examiners if they are in possession of information that
25 indicates another physician is impaired, incompetent or demonstrates
26 unprofessional conduct, and provides immunity for the notification.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1804

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2005

The Assembly Health and Human Services Committee reports favorably Senate Bill No. 1804 (1R).

This bill, which is designated the "Health Care Professional Responsibility and Reporting Enhancement Act," is designed to strengthen patient protections against health care professionals who have demonstrated impairment or incompetence or engaged in professional misconduct.

The bill:

-- revises and strengthens reporting requirements of certain entities that employ health care professionals regarding disciplinary actions taken by the entity against a health care professional for reasons related to that professional's impairment or his incompetency or professional misconduct;

-- requires all licensed health care professionals to undergo a criminal history record background check as a condition of renewal of their professional license, and to report information about an impairment or gross incompetence or unprofessional conduct of another health care professional to State authorities and their employer, when applicable; and

-- requires certain employers of health care professionals, upon the inquiry of another employer, to truthfully disclose certain information concerning the professional's job performance.

Specifically, the bill provides as follows:

C Health care facilities, managed care plans, State and county psychiatric hospitals, State developmental centers and home care services agencies and staffing registries (hereafter referred to as "health care entities") are to report certain disciplinary actions taken against a health care professional to the Director of the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety, which has jurisdiction over State professional and occupational licensing boards.

-- The actions that must be reported relate to a health care professional's impairment, incompetency or professional misconduct that relates adversely to patient care or safety. The actions include, but are not limited to: a revocation or suspension of privileges or

discharge from the staff of the health care entity; the placing of conditions or limitations on the exercise of clinical privileges or practice; voluntary resignation from the staff under certain circumstances; voluntary relinquishment of any partial privilege or authorization to perform a specific procedure under certain circumstances; and the granting of a leave of absence under certain circumstances.

-- The health care entity must report to DCA if the professional is a party to a medical malpractice liability suit, to which the health care entity is also a party, and in which there is a settlement, judgment or award.

-- The health care entity must notify DCA if the conditions or limitations on the exercise of clinical privileges or practice are altered or restored, and provide a copy of the notice that it sends to DCA to the professional who is a subject of the notice.

C The health care entity is to notify DCA if it is in possession of information that indicates a health care professional has failed to comply with a request to seek assistance from a DCA or board-approved professional assistance program, or has failed to follow the required treatment regimen or monitoring program, to assure that the professional's physical, mental or emotional condition or substance abuse does not impair the professional's ability to practice with reasonable skill and safety.

C A health care entity that notifies DCA or a licensing board, in good faith and without malice, is not liable for civil damages in any cause of action arising out of the provision of the required information. An entity which fails to provide the required notices may be subject to such penalties as the Department of Health and Senior Services determines.

C "Health care professional" is defined to mean: a person licensed or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a health care profession that is regulated by the Director of DCA or by one of the following boards: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee. "Health care

professional" also includes a nurse aide and personal care assistant certified by the Department of Health and Senior Services.

C The bill amends:

-- N.J.S.A.26:2H-12.2a (which requires health care facilities and HMOs to maintain records of documented complaints and disciplinary actions taken against a physician) to apply to all health care entities regarding all health care professionals; and

-- N.J.S.A.45:1-28 et seq., which requires health care professionals to undergo criminal history record background checks prior to becoming licensed or otherwise authorized by the State to practice a health care profession, to extend its background check requirement, over a four-year period, to current licensees upon renewal of their license or authorization to practice.

C If a licensee refuses to consent to, or cooperate in, the securing of a criminal history record background check as required in this bill, the board or director, as applicable, is to refuse to renew the license or other authorization of the licensee, without a hearing, and to notify the licensee of that denial.

C A person (including a health care entity and a health care professional) is granted immunity for providing to DCA, a licensing board or the Medical Practitioner Review Panel, in good faith and without malice, any information concerning an act by a health care professional which the person has reasonable cause to believe involves misconduct that may be subject to disciplinary action by DCA, the board or review panel, as applicable, or any information relating to such conduct requested by DCA, the board or review panel in the exercise of its statutory responsibilities or which may be required by statute.

C Any information provided to DCA or a licensing board concerning the conduct of a health care professional as required by law, is to be treated as confidential pending final disposition of the inquiry or investigation by the board or DCA, as applicable, except for information required to be shared with the Attorney General, Department of Health and Senior Services or any other government agency.

C A health care professional is to promptly notify DCA if that health care professional is in possession of information which reasonably indicates that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare.

-- A health care professional will be deemed to have satisfied the reporting requirement by promptly providing notice to DCA, the board or a professional assistance or intervention program approved or designated by DCA or a board to provide confidential oversight of the licensee.

-- A health care professional who fails to so notify DCA is subject to disciplinary action and civil penalties; however, a health care

professional is not required to notify DCA about an impaired or incompetent health care professional if the health care professional's knowledge of the other professional's impairment or incompetence was obtained as a result of rendering treatment to that professional.

-- A health care professional is granted immunity for providing the required notification, in good faith and without malice to DCA, the board or review panel; and there is to be no private right of action against a health care professional for failure to comply with these reporting requirements, or against a health care entity if a health care professional employed by, under contract to, or who has privileges granted by, the health care entity fails to comply with the reporting requirements.

C Upon receipt of notice from a health care entity or health care professional concerning the conduct of a health care professional, DCA is to promptly notify the appropriate licensing board.

-- DCA or the board, as applicable, is to initiate an investigation and obtain any additional information necessary to determine if disciplinary charges should be pursued or if an application to temporarily suspend or otherwise limit the health care professional's license or other authorization to practice should be initiated.

-- If the Attorney General files charges based on information derived from the notice from a health care entity or if the board revokes or permanently or temporarily suspends or otherwise limits the license or other authorization to practice of a health care professional, the board is to notify each health care entity with which the health care professional is affiliated.

C Any health care professional seeking to become employed by, enter into a contract to render professional services to or obtain privileges at a health care entity, or provide professional services pursuant to an agreement with a health care services firm or staffing registry, who engages in fraud, misrepresentation or deception in the application or credentialing process is to be subject to disciplinary proceedings pursuant to N.J.S.A.45:1-21.

C A health care entity, upon the inquiry of another health care entity, is required to truthfully: (1) disclose whether, within the seven years preceding the inquiry, it provided any notice to DCA or the review panel, pursuant to reporting requirements for health care entities established in the bill, with respect to the health care professional about whom the inquiry has been made; and (2) provide information about a current or former employee's job performance as it relates to patient care and, in the case of a former employee, the reason for the employee's separation.

-- The bill specifies that "job performance" relates to the suitability of the employee for re-employment at a health care entity, and the employee's skills and abilities as they relate to suitability for future employment at a health care entity. This information is to be based on the employee's performance evaluation, and is to be provided to another health care entity only

if: (1) the evaluation has been signed by the evaluator and shared with the employee; (2) the employee has had the opportunity to respond; and (3) the employee's response, if any, has been taken into consideration when providing the information to another health care entity. Job performance as it relates to patient care is not to include the current or former employee's participation in labor activities pursuant to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

-- A health care entity, or any employee designated by the entity, who provides the required information to another health care entity, in good faith and without malice, is not liable for damages in any cause of action for providing or reporting the information.

-- A health care entity which fails to truthfully disclose information to another health care entity making an inquiry pursuant to this bill or fails to cooperate with the request for information by the other health care entity is to be subject to such penalties as the Department of Health and Senior Services or the Director of DCA determines appropriate.

C A health care professional employed by or practicing at a health care entity is required to promptly notify the person at the entity, designated by that entity, if the health care professional is in possession of information which reasonably indicates that another health care professional who is employed by or practicing at the entity has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare, and provides immunity to that health care professional for notifying the entity, in good faith and without malice.

C DCA is to employ a full-time Health Care Professional Information Clearinghouse Coordinator to assist the Director of DCA in compiling and disseminating to the appropriate licensing board or other applicable entity the information reported to DCA by health care entities and professionals pursuant to the bill and such other information as specified by the director; and the director of DCA is to provide the licensing boards with professional and administrative staff as may be needed to carry out the purposes of the bill.

C The bill repeals the following sections of law, the provisions of which are incorporated in the new sections of the bill:

-- N.J.S.A.26:2H-12.2, which requires health care facilities and health maintenance organizations to report certain disciplinary actions taken against physicians and podiatrists to the State Board of Medical Examiners (BME);

-- N.J.S.A.45:9-19.1, which provides immunity to a person who in good faith provides information to the BME concerning the conduct of a physician;

-- N.J.S.A.45:9-19.3, which provides that information concerning

the conduct of a physician is confidential pending final disposition by the BME; and

-- N.J.S.A.45:9-19.5, which requires physicians to notify the BME if they are in possession of information that indicates another physician is impaired, incompetent or demonstrates unprofessional conduct, and provides immunity for the notification.

This bill is identical to Assembly Bill No. 3533 (Weinberg/Greenstein), which the committee also reported on this date.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 1804

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 27, 2004

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 1804.

As amended by committee, this bill revises and strengthens reporting requirements of health care facilities, managed care plans and certain other employers of health care professionals regarding disciplinary actions taken by the entity against a health care professional for reasons related to that professional's impairment or his incompetency or professional misconduct. Also, all licensed health care professionals will be required to undergo a criminal history record background check as a condition of renewal of their professional license. The bill requires health care professionals to report information about an impairment or gross incompetence or unprofessional conduct of another health care professional to State authorities and their employer, when applicable. Also, certain employers of health care professionals will be required, upon the inquiry of another employer, to truthfully disclose certain information concerning the professional's job performance.

Specifically, the bill:

- C Requires health care facilities, managed care plans, State and county psychiatric hospitals, State developmental centers and home care services agencies and staffing registries (hereafter referred to as "health care entities") to report certain disciplinary actions taken against a health care professional to the Director of the Division of Consumer Affairs, which has jurisdiction over the State's professional and occupational licensing boards. The actions that must be reported relate to a health care professional's impairment, incompetency or professional misconduct, which incompetency or misconduct relates adversely to patient care or safety. The actions include, but are not limited to: a revocation or suspension of privileges or discharge from the staff of the entity; the placing of conditions or limitations on the exercise of clinical privileges or practice; voluntary resignation from the staff under

certain circumstances; voluntary relinquishment of any partial privilege or authorization to perform a specific procedure under certain circumstances; and the granting of a leave of absence under certain circumstances. The entity also shall report to the division if the professional is a party to a medical malpractice liability suit, to which the entity is also a party, and in which there is a settlement, judgment or award.

The bill also provides that the entity shall notify the board if the conditions or limitations on the exercise of clinical privileges or practice are altered or restored. The entity shall also provide a copy of the notice it sends to the division, to the professional who is a subject of the notice.

- C Requires the entity to notify the division if it is in possession of information that indicates a health care professional has failed to comply with a request to seek assistance from a division or board-approved professional assistance program, or has failed to follow the required treatment regimen or monitoring program, to assure that the professional's physical, mental or emotional condition or substance abuse does not impair the professional's ability to practice with reasonable skill and safety.
- C Provides that an entity that notifies the division or a licensing board, in good faith and without malice, is not liable for civil damages in any cause of action arising out of the provision of the required information. The bill also provides that an entity which fails to provide the required notices may be subject to such penalties as the Department of Health and Senior Services determines.
- C Defines "health care professional" to mean: a person licensed or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a health care profession that is regulated by the Director of the Division of Consumer Affairs or by one of the following boards: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee. "Health care professional" also includes a nurse aide and personal care assistant certified by the Department of Health and Senior Services.

- C Amends N.J.S.A.26:2H-12.2a (which requires health care facilities and HMOs to maintain records of documented complaints and disciplinary actions taken against a physician) to apply to all health care entities regarding all health care professionals.
- C Amends N.J.S.A.45:1-28 et seq. (which requires health care professionals to undergo criminal history record background checks prior to becoming licensed or otherwise authorized by the State to practice a health care profession) to extend this background check requirement, over a four-year period, to current licensees upon renewal of their license or authorization to practice.

Because of the large number of licensees who will have to undergo the background check, the bill provides that the Director of Consumer Affairs shall establish, by regulation, a schedule of dates by which the background check shall be implemented for each of the boards.
- C Provides that if a licensee refuses to consent to, or cooperate in, the securing of a criminal history record background check as required in this bill, the board or director, as applicable, shall refuse to renew the license or other authorization of the licensee, without a hearing, and shall notify the licensee of that denial.
- C Provides immunity to any person (including a health care entity and a health care professional) who provides to the division, a licensing board or the Medical Practitioner Review Panel, in good faith and without malice, any information concerning an act by a health care professional which the person has reasonable cause to believe involves misconduct that may be subject to disciplinary action by the division, board or review panel, as applicable, or any information relating to such conduct requested by the division, board or review panel in the exercise of its statutory responsibilities or which may be required by statute.
- C Provides that any information provided to the division or a licensing board concerning the conduct of a health care professional as required by law, shall be treated as confidential pending final disposition of the inquiry or investigation by the board or division, as applicable, except for that information required to be shared with the Attorney General, Department of Health and Senior Services or any other government agency.
- C Requires a health care professional to promptly notify the division if that health care professional is in possession of information which reasonably indicates that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare. A health care professional shall be deemed to have satisfied the reporting requirement by promptly providing notice to the division, the board or a professional assistance or intervention program approved or designated by the division or a board to provide confidential oversight of the licensee. A health care professional

who fails to so notify the division is subject to disciplinary action and civil penalties; however, a health care professional is not required to notify the division about an impaired or incompetent health care professional if the health care professional's knowledge of the other professional's impairment or incompetence was obtained as a result of rendering treatment to that professional. The bill provides immunity to a health care professional who provides the required notification, in good faith and without malice to the division, board or review panel. Further, the bill provides that there shall be no private right of action against a health care professional for failure to comply with these reporting requirements, or against a health care entity if a health care professional employed by, under contract to, or has privileges granted by, the entity fails to comply with the reporting requirements.

- C Provides that upon receipt of notice from a health care entity or health care professional concerning the conduct of a health care professional, the division shall promptly notify the appropriate licensing board. The division or board, as applicable, shall initiate an investigation and obtain any additional information necessary to determine if disciplinary charges should be pursued or if an application to temporarily suspend or otherwise limit the health care professional's license or other authorization to practice should be initiated. If the Attorney General files charges based on information derived from the notice from a health care entity or if the board revokes or permanently or temporarily suspends or otherwise limits the license or other authorization to practice of a health care professional, the board shall notify each health care entity with which the health care professional is affiliated.
- C Requires that any health care professional seeking to become employed by, enter into a contract to render professional services to or obtain privileges at a health care entity, or provide professional services pursuant to an agreement with a health care services firm or staffing registry, who engages in fraud, misrepresentation or deception in the application or credentialing process shall be subject to disciplinary proceedings pursuant to N.J.S.A.45:1-21.
- C Provides that a health care entity, upon the inquiry of another health care entity, shall truthfully: (1) disclose whether, within the seven years preceding the inquiry, it provided any notice to the division or the review panel, pursuant to reporting requirements for health care entities established in this bill, with respect to the health care professional about whom the inquiry has been made; and (2) provide information about a current or former employee's job performance as it relates to patient care and, in the case of a former employee, the reason for the employee's separation.

The bill specifies that "job performance" shall relate to the suitability of the employee for re-employment at a health care

entity, and the employee's skills and abilities as they relate to suitability for future employment at a health care entity. This information shall be based on the employee's performance evaluation, and shall be provided to another health care entity only if: (1) the evaluation has been signed by the evaluator and shared with the employee; (2) the employee has had the opportunity to respond; and (3) the employee's response, if any, has been taken into consideration when providing the information to another health care entity. Job performance as it relates to patient care shall not include the current or former employee's participation in labor activities pursuant to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

The bill also provides that a health care entity, or any employee designated by the entity, who provides the required information to another health care entity, in good faith and without malice, is not liable for damages in any cause of action for providing or reporting the information. Also, a health care entity which fails to truthfully disclose information to another health care entity making an inquiry pursuant to this bill or fails to cooperate with the request for information by the other health care entity shall be subject to such penalties as the Department of Health and Senior Services or the Director of Consumer Affairs determines appropriate.

- C Requires a health care professional employed by or practicing at a health care entity to promptly notify the person at the entity, designated by that entity, if the health care professional is in possession of information which reasonably indicates that another health care professional who is employed by or practicing at the entity has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare, and provides immunity to that health care professional for notifying the entity, in good faith and without malice.
- C Provides that:
 - the Division of Consumer Affairs shall employ a full-time Health Care Professional Information Clearinghouse Coordinator to assist the Director of the Division of Consumer Affairs in compiling and disseminating to the appropriate licensing board or other applicable entity the information reported to the division by health care entities and professionals pursuant to this bill and such other information as specified by the director; and
 - the director shall provide the licensing boards with professional and administrative staff as may be needed to carry out the purposes of the bill.
- C Repeals the following sections of law, whose provisions are incorporated in the new sections of the bill:
 - N.J.S.A.26:2H-12.2, which requires health care facilities and health maintenance organizations to report certain disciplinary actions taken against physicians and podiatrists to the State Board

of Medical Examiners (BME);

- N.J.S.A.45:9-19.1, which provides immunity to a person who in good faith provides information to the BME concerning the conduct of a physician;

- N.J.S.A.45:9-19.3, which provides that information concerning the conduct of a physician is confidential pending final disposition by the BME; and

- N.J.S.A.45:9-19.5, which requires physicians to notify the Board of Medical Examiners if they are in possession of information that indicates another physician is impaired, incompetent or demonstrates unprofessional conduct, and provides immunity for the notification.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- clarify, in section 2 of the bill, the circumstances for which health care entities are required to report to the division on actions taken against or concerning a health care professional;

- provide, in section 2 of the bill, that in the case of a health care professional who is the subject of a notice to the division and is providing services at a health care entity through a health care services firm or staffing agency, the health care entity shall provide a copy of the notice to the firm or agency when it submits the notice to the division;

- add, in section 3 of the bill, that a health care entity shall maintain records of all "documented" complaints of "events related to patient care" about a health care professional;

- specify, in section 10 of the bill, that the immunity provided in that section applies to a health care entity and health care professional, as well as any person who provides information, in good faith and without malice, to the division, board or review panel;

- provide, in section 12 of the bill, that there shall be no private right of action against a health care entity if a health care professional who is employed by, under contract to render professional services to, or has privileges granted by, that health care entity, or who provides such services pursuant to an agreement with a health care services firm or staffing registry, fails to comply with the notification requirements of this section; and

- require, in section 15 of the bill, that a health care entity provide information about a current or former employee's job performance as it relates to patient care, and specify what information concerning "job performance" shall be provided. The amendments also provide immunity to employers for the provision of the information to another employer, if the information is provided in good faith and without malice.

ASSEMBLY, No. 3533

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED NOVEMBER 22, 2004

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

“Health Care Professional Responsibility and Reporting Enhancement Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning health care professionals and revising parts of
2 statutory law.

3

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

6

7 1. This act shall be known and may be cited as the "Health Care
8 Professional Responsibility and Reporting Enhancement Act."

9

10 2. (New section) a. A health care entity shall notify the division in
11 writing if a health care professional who is employed by, under
12 contract to render professional services to, or has privileges granted
13 by, that health care entity, or who provides such services pursuant to
14 an agreement with a health care services firm or staffing registry:

15 (1) for reasons relating to the health care professional's impairment,
16 incompetency or professional misconduct, which incompetency or
17 professional misconduct relates adversely to patient care or safety: (a)
18 has full or partial privileges summarily or temporarily revoked or
19 suspended, or permanently reduced, suspended or revoked; (b) has
20 been removed from the list of eligible employees of a health services
21 firm or staffing registry; (c) has been discharged from the staff; or (d)
22 has had a contract to render professional services terminated or
23 rescinded;

24 (2) has conditions or limitations placed on the exercise of clinical
25 privileges or practice within the health care entity for reasons relating
26 to the health care professional's impairment, incompetency or
27 professional misconduct or, which incompetency or professional
28 misconduct relates adversely to patient care or safety, including, but
29 not limited to, second opinion requirements, non-routine concurrent
30 or retrospective review of admissions or care, non-routine supervision
31 by one or more members of the staff, or the completion of remedial
32 education or training;

33 (3) voluntarily resigns from the staff if: (a) the health care entity is
34 reviewing the health care professional's patient care or reviewing
35 whether, based upon its reasonable belief, the health care professional's
36 conduct demonstrates an impairment or incompetence or is
37 unprofessional, which incompetence or unprofessional conduct relates
38 adversely to patient care or safety; or (b) the health care entity,
39 through any member of the medical or administrative staff, has
40 expressed an intention to do such a review;

41 (4) voluntarily relinquishes any partial privilege or authorization to
42 perform a specific procedure if: (a) the health care entity is reviewing
43 the health care professional's patient care or reviewing whether, based

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.

1 upon its reasonable belief, the health care professional's conduct
2 demonstrates an impairment or incompetence or is unprofessional,
3 which incompetence or unprofessional conduct relates adversely to
4 patient care or safety; or (b) the health care entity, through any
5 member of the medical or administrative staff, has expressed an
6 intention to do such a review;

7 (5) while under, or subsequent to, a review by the health care
8 entity of the health care professional's patient care or professional
9 conduct, is granted a leave of absence for reasons relating to a
10 physical, mental or emotional condition or drug or alcohol use which
11 impairs the health care professional's ability to practice with
12 reasonable skill and safety, except that no report is required for
13 pregnancy-related leaves of absence or if the health care professional
14 has sought assistance from a professional assistance or intervention
15 program approved or designated by the division or a board to provide
16 confidential oversight of the health care professional and is following
17 the treatment regimen or monitoring as that program requires; or

18 (6) is a party to a medical malpractice liability suit, to which the
19 health care entity is also a party, and in which there is a settlement,
20 judgment or arbitration award.

21 As used in this subsection, incompetence, professional misconduct
22 and unprofessional conduct shall not include personal conduct, such
23 as tardiness, insubordination or other similar behavior, which does not
24 relate to patient care or safety.

25 b. A health care entity shall notify the division in writing if it is in
26 possession of information that indicates that a health care professional
27 has failed to comply with a request to seek assistance from a
28 professional assistance or intervention program approved or
29 designated by the division or a board to provide confidential oversight
30 of the health care professional, or has failed to follow the treatment
31 regimen or monitoring program required by that program to assure
32 that the health care professional's physical, mental or emotional
33 condition or drug or alcohol use does not impair the health care
34 professional's ability to practice with reasonable skill and safety.

35 c. A health care entity shall notify the division in writing if any
36 health care professional who has been the subject of a report pursuant
37 to this section, has had conditions or limitations on the exercise of
38 clinical privileges or practice within the health care entity altered, or
39 privileges restored, or has resumed exercising clinical privileges that
40 had been voluntarily relinquished.

41 d. In the case of a health care professional who is providing services
42 at a health care entity pursuant to an agreement with a health care
43 services firm or staffing agency and is the subject of a notice pursuant
44 to this section, the health care entity shall, when it submits a notice to
45 the division concerning that health care professional, provide a copy
46 of the notice to the health care services firm or staffing agency.

1 e. The form of notification shall be prescribed by the Commissioner
2 or Health and Senior Services, in consultation with the Commissioner
3 of Human Services in the case of psychiatric facilities and
4 developmental centers, and shall contain such information as may be
5 required by the division and shall be made within seven days of the
6 date of the action, settlement, judgment or award.

7 f. A health care entity which fails to provide such notice to the
8 division or fails to cooperate with a request for information by the
9 division, the board or the Medical Practitioner Review Panel
10 established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8)
11 shall be subject to such penalties as the Department of Health and
12 Senior Services may determine pursuant to sections 13 and 14 of
13 P.L.1971, c.136 (C.26:2H-13 and 26:2H-14).

14 g. A health care entity, or any employee thereof, which provides
15 information to the division, the board, the Medical Practitioner Review
16 Panel, a health care services firm or staffing agency, or the Department
17 of Health and Senior Services, in good faith and without malice,
18 regarding a health care professional pursuant to the provisions of this
19 section or section 3 of P.L.1989, c.300 (C.26:2H-12.2a), is not liable
20 for civil damages in any cause of action arising out of the provision or
21 reporting of the information.

22 h. A health care entity shall provide the health care professional
23 who is the subject of a notice pursuant to paragraphs (1), (2), (4) and
24 (5) of subsection a. of this section and subsection c. of this section
25 with a copy of the notice provided to the division, when the health
26 care entity submits the notice to the division.

27 i. For the purposes of this section, section 3 of P.L.1989, c.300
28 (C.26:2H-12.2a) and section 15 of P.L. , c. (C.)(pending before the
29 Legislature as this bill):

30 "Board" means a professional and occupational licensing board
31 within the Division of Consumer Affairs in the Department of Law and
32 Public Safety which licenses or otherwise authorizes a health care
33 professional to practice a health care profession.

34 "Division" means the Division of Consumer Affairs in the
35 Department of Law and Public Safety.

36 "Health care entity" means a health care facility licensed pursuant
37 to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance
38 organization authorized to operate pursuant to P.L.1973, c.337
39 (C.26:2J-1 et seq.), a carrier which offers a managed care plan
40 regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or
41 county psychiatric hospital, a State developmental center, a staffing
42 registry, and a home care services agency as defined in section 1 of
43 P.L.1947, c.262 (C.45:11-23).

44 "Health care professional" means a person licensed or otherwise
45 authorized pursuant to Title 45 or Title 52 of the Revised Statutes to
46 practice a health care profession that is regulated by the Director of

1 the Division of Consumer Affairs or by one of the following boards:
2 the State Board of Medical Examiners, the New Jersey Board of
3 Nursing, the New Jersey State Board of Dentistry, the New Jersey
4 State Board of Optometrists, the New Jersey State Board of
5 Pharmacy, the State Board of Chiropractic Examiners, the
6 Acupuncture Examining Board, the State Board of Physical Therapy,
7 the State Board of Respiratory Care, the Orthotics and Prosthetics
8 Board of Examiners, the State Board of Psychological Examiners, the
9 State Board of Social Work Examiners, the State Board of Veterinary
10 Medical Examiners, the State Board of Examiners of Ophthalmic
11 Dispensers and Ophthalmic Technicians, the Audiology and Speech-
12 Language Pathology Advisory Committee, the State Board of
13 Marriage and Family Therapy Examiners, the Occupational Therapy
14 Advisory Council and the Certified Psychoanalysts Advisory
15 Committee. "Health care professional" also includes a nurse aide and
16 a personal care assistant certified by the Department of Health and
17 Senior Services.

18

19 3. Section 3 of P.L.1989, c.300 (C.26:2H-12.2a) is amended to
20 read as follows:

21 3. a. A health care [facility or health maintenance
22 organization] entity shall maintain all records of all
23 documented complaints of events related to patient care about, and
24 disciplinary proceedings or actions against, a [practitioner] health care
25 professional who is employed by or has an affiliation with the health
26 care [facility or health maintenance organization] entity. The health
27 care [facility or health maintenance organization] entity shall retain
28 the information for a period of seven years and make the records,
29 including any information the health care [facility or health
30 maintenance organization] entity has pertaining to records maintained
31 on the [practitioner] health care professional prior to the effective
32 date of P.L.1989, c.300 (C.45:9-19.4 et al.), available to [the State
33 Board of Medical Examiners] the division, the board which licenses
34 or otherwise authorizes the health care professional to practice, the
35 Medical Practitioner Review Panel established pursuant to section 8
36 of P.L.1989, c.300 (C.45:9-19.8) and the Department of Health and
37 Senior Services, as applicable, upon request.

38 b. A health care [facility or health maintenance organization] entity
39 shall maintain for a period of four years all records and source data
40 relating to its mortality, morbidity, complication, infection and
41 readmission [experience] and shall make the records available to the
42 division, the board which licenses or otherwise authorizes the health
43 care professional, the review panel and the Department of Health and
44 Senior Services, as applicable, upon request.

45 c. A health care [facility or health maintenance organization] entity

1 which fails to maintain the records required pursuant to this section
2 shall be subject to such penalties as the Department of Health and
3 Senior Services shall determine pursuant to sections 13 and 14 of
4 P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16 of
5 P.L.1997, c.192 (C.26:2S-16), or the director shall determine pursuant
6 to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.

7 (cf: P.L.1989, c.300, s.3)

8

9 4. Section 1 of P.L.2002, c.104 (C. 45:1-28) is amended to read as
10 follows:

11 1. As used in this act:

12 "Applicant" means an applicant for licensure or other authorization
13 to engage in a health care profession.

14 "Board" means a professional and occupational licensing board
15 within the Division of Consumer Affairs in the Department of Law and
16 Public Safety.

17 "Director" means the Director of the Division of Consumer Affairs
18 in the Department of Law and Public Safety.

19 "Division" means the Division of Consumer Affairs in the
20 Department of Law and Public Safety.

21 "Health care professional" means a health care professional who is
22 licensed or otherwise authorized, pursuant to Title 45 or Title 52 of
23 the Revised Statutes, to practice a health care profession that is
24 regulated by one of the following boards or by the Director of the
25 Division of Consumer Affairs: the State Board of Medical Examiners,
26 the New Jersey Board of Nursing, the New Jersey State Board of
27 Dentistry, the New Jersey State Board of Optometrists, the New
28 Jersey State Board of Pharmacy [of the State of New Jersey], the
29 State Board of Chiropractic Examiners, the Acupuncture Examining
30 Board, the State Board of Physical Therapy, the State Board of
31 Respiratory Care, the Orthotics and Prosthetics Board of Examiners,
32 the State Board of Psychological Examiners, the State Board of Social
33 Work Examiners, the State Board of Veterinary Medical Examiners,
34 the State Board of Examiners of Ophthalmic Dispensers and
35 Ophthalmic Technicians, the Audiology and Speech-Language
36 Pathology Advisory Committee, the State Board of Marriage and
37 Family Therapy Examiners, the Occupational Therapy Advisory
38 Council or the Certified Psychoanalysts Advisory Committee.

39 Health care professional shall not include a nurse aide or personal
40 care assistant who is required to undergo a criminal history record
41 background check pursuant to section 2 of P.L.1997, c.100
42 (C.26:2H-83) or a homemaker-home health aide who is required to
43 undergo a criminal history record background check pursuant to
44 section 7 of P.L.1997, c.100 (C.45:11-24.3).

45 "Licensee" means an individual who has been issued a license or
46 other authorization to practice a health care profession.

47 (cf: P.L.2002, c.104, s.1)

1 5. Section 2 of P.L.2002, c.104 (C.45:1-29) is amended to read as
2 follows:

3 2. a. A professional and occupational licensing board within the
4 Division of Consumer Affairs in the Department of Law and Public
5 Safety or the director who regulates the practice of a health care
6 professional, as applicable, shall not issue an initial license or other
7 authorization to practice a health care profession that is regulated by
8 that board or the director to any applicant therefor unless the board or
9 director, as applicable, first determines, consistent with section 8 of
10 P.L.1978, c.73 (C.45:1-21), that no criminal history record
11 information exists on file in the Federal Bureau of Investigation,
12 Identification Division, or in the State Bureau of Identification in the
13 Division of State Police, which may disqualify the applicant from being
14 licensed or otherwise authorized to practice as a health care
15 professional.

16 b. A board or the director, as applicable, shall not renew or, if
17 renewed, shall revoke a license or other authorization to practice a
18 health care profession that is regulated by that board or the director of
19 any applicant therefor unless the board or director determines,
20 consistent with section 8 of P.L.1978, c.73 (C.45:1-21), that no
21 criminal history record information exists on file in the Federal Bureau
22 of Investigation, Identification Division, or in the State Bureau of
23 Identification in the Division of State Police, which may provide
24 grounds for the refusal to renew the license or other authorization to
25 practice as a health care professional.

26 The director shall establish, by regulation, a schedule of dates by
27 which the requirements of this subsection shall be implemented, so that
28 all licensees will have been required to submit to a criminal history
29 record background check beginning no later than four years after the
30 effective date of P.L. , c. (C.)(pending before the Legislature as this
31 bill).

32 The director may, in an emergent circumstance, temporarily waive
33 the requirement to undergo a criminal history record background
34 check as a condition of renewal of a license or other authorization to
35 practice a health care profession.

36 (cf: P.L.2002, c.104, s.2)

37

38 6. Section 3 of P.L.2002, c.104 (C.45:1-30) is amended to read as
39 follows:

40 3. a. An applicant or licensee who is required to undergo a
41 criminal history record background check pursuant to section 2 of
42 **[this act]** P.L.2002, c.104 (C.45:1-29) shall submit to the director that
43 individual's name, address and fingerprints taken on standard
44 fingerprint cards, or through any equivalent means, by a State or
45 municipal law enforcement agency or by a private entity under
46 contract with the State. The director is authorized to exchange

1 fingerprint data with and receive criminal history record information
2 from the Federal Bureau of Investigation and the Division of State
3 Police for use in making the determinations required pursuant to this
4 act.

5 b. Upon receipt of the criminal history record information for an
6 applicant or licensee from the Federal Bureau of Investigation or the
7 Division of State Police, the director shall immediately notify the
8 board, as applicable.

9 c. If an applicant refuses to consent to, or cooperate in, the
10 securing of a criminal history record background check, the board or
11 director, as applicable, shall not issue a license or other authorization
12 to practice a health care profession to the applicant and shall notify the
13 applicant of that denial.

14 d. If a licensee refuses to consent to, or cooperate in, the securing
15 of a criminal history record background check as required during the
16 licensure or other authorization renewal process, the board or director,
17 as applicable, shall refuse to renew the license or other authorization
18 of the licensee, without a hearing, and shall notify the licensee of that
19 denial.

20 e. A licensee who:

21 (1) has permitted a license or other authorization to lapse or whose
22 license or other authorization has been suspended, revoked or
23 otherwise has had licensure or other authorization privileges restricted,
24 and

25 (2) has not already submitted to a criminal history record
26 background check,

27 shall be required to submit fingerprints as part of the licensure or other
28 authorization reinstatement process. If a reinstatement applicant
29 refuses to consent to, or cooperate in, the securing of a criminal
30 history record background check as required during the reinstatement
31 process, the board or director, as applicable, shall automatically deny
32 reinstatement of the license or other authorization, without a hearing,
33 and shall notify the licensee of that denial.

34 (P.L.2002, c.104, s.3)

35

36 7. Section 4 of P.L.2002, c.104 (C. 45:1-31) is amended to read as
37 follows:

38 4. An applicant or licensee shall be required to assume the cost of
39 the criminal history record background check conducted pursuant to
40 sections 1 through 3 of [this act] P.L.2002, c.104 (C.45:1-28 through
41 45:1-30) and section 14 of P.L.1997, c.100 (C.53:1-20.9a), in
42 accordance with procedures determined by regulation of the director.
43 (cf: P.L.2002, c.104, s.4)

44

45 8. Section 9 of P.L.1989, c.300 (C.45:9-19.9) is amended to read
46 as follows:

1 9. a. The review panel shall receive:

2 (1) Notice from a health care [facility or health maintenance
3 organization] entity, provided through the Division of Consumer
4 Affairs in the Department of Law and Public Safety, pursuant to
5 section [1 of P.L.1983, c.247 (C.26:2H-12.2)] 2 of P.L. , c. (C.)
6 (pending before the Legislature as this bill);

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

12 b. The review panel may receive referrals from the board which
13 may include complaints alleging professional misconduct,
14 incompetence, negligence or impairment of a practitioner from other
15 health care providers and consumers of health care.

16 c. Upon receipt of a notice or complaint pursuant to this section,
17 the review panel shall promptly investigate the information received
18 and obtain any additional information that may be necessary in order
19 to make a recommendation to the board. The review panel may seek
20 the assistance of a consultant or other knowledgeable person, as
21 necessary, in making its recommendation. The review panel may
22 request the board or the Attorney General to exercise investigative
23 powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the
24 conduct of its investigation.

25 (1) If the review panel has reasonable cause to believe that a
26 practitioner represents an imminent danger to his patients, the review
27 panel shall immediately notify the State Board of Medical Examiners
28 and the Attorney General and recommend the initiation of an
29 application before the board to temporarily suspend or otherwise limit
30 the practitioner's license pending further proceedings by the review
31 panel or the board.

32 If the board temporarily suspends or otherwise limits the license,
33 the board shall notify each [licensed] health care [facility and health
34 maintenance organization] entity with which the practitioner is
35 affiliated and every practitioner in the State with which the practitioner
36 is directly associated in his private practice.

37 (2) A practitioner who is the subject of an investigation shall be
38 promptly notified of the investigation, pursuant to procedures adopted
39 by regulation of the board that give consideration to the health, safety
40 and welfare of the practitioner's patients and to the necessity for a
41 confidential or covert investigation by the review panel. At the panel's
42 request or upon a good cause showing by the practitioner an informal
43 hearing shall be scheduled before the review panel or a subcommittee
44 of at least three review panel members, in accordance with regulations
45 adopted by the board. The hearing shall be transcribed and the
46 practitioner shall be entitled to a copy of the transcript, at his own

1 expense. A practitioner who presents information to the review panel
2 is entitled to be represented by counsel.

3 (3) Notwithstanding any provision of this section to the contrary,
4 in any case in which the board determines to conduct an investigation
5 of a practitioner who it has reasonable cause to believe represents an
6 imminent danger to his patients, the board may direct the review panel
7 to provide the board with its files pertaining to that practitioner and
8 may direct the review panel to promptly terminate its investigation of
9 that practitioner without making a recommendation pursuant to
10 subsection d. of this section.

11 Upon request of the review panel, the State Board of Medical
12 Examiners shall provide the review panel with any information
13 contained in the board's files concerning a practitioner.

14 d. Upon completion of its review, the review panel shall prepare a
15 report recommending one of the following dispositions:

16 (1) Recommend to the State Board of Medical Examiners that the
17 matter be referred to the Attorney General for the initiation of
18 disciplinary action against the practitioner who is the subject of the
19 notice or complaint, pursuant to section 8 or 9 of P.L.1978, c.73
20 (C.45:1-21 or 45:1-22);

21 (2) Defer making a recommendation to the board pending the
22 outcome of litigation or a health care [facility or health maintenance
23 organization] entity disciplinary proceeding, if there is no evidence
24 that the practitioner's professional conduct may jeopardize or
25 improperly risk the health, safety or life of a patient;

26 (3) Refer the practitioner to the appropriate licensed health care
27 practitioner treatment program recognized by the State Board of
28 Medical Examiners and promptly notify the medical director of the
29 board of the referral;

30 (4) Refer the practitioner to the appropriate focused education
31 program recognized by the State Board of Medical Examiners and
32 promptly notify the educational director of the board of the referral;
33 or

34 (5) Find that no further action is warranted at this time.

35 e. A member of the State Board of Medical Examiners shall not
36 participate by voting or any other action in any matter before the
37 board on which the board member has participated previously as a
38 review panel member.

39 f. The State Board of Medical Examiners may affirm, reject or
40 modify any disposition of the review panel. After its consideration of
41 the panel recommendation the board shall notify the practitioner who
42 has been the subject of a notice or complaint of the review panel's
43 recommendation and the board's determination.

44 g. Nothing in this section shall be construed to prevent or limit the
45 State Board of Medical Examiners, the Director of the Division of
46 Consumer Affairs in the Department of Law and Public Safety or the

1 Attorney General from taking any other action permitted by law
2 against a practitioner who is the subject of an investigation by the
3 review panel.

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

8 i. As used in this section, "focused education program" means an
9 individualized and systematic process to assess the educational needs
10 of a licensee based on scientific analysis, technical skill and
11 interpersonal evaluation as they relate to the licensee's professional
12 practice, and the institution of remedial education and any supervision,
13 monitoring or limitations of the licensee.

14 (cf: P.L.2001, c.307, s.8)

15

16 9. (New section) As used in sections 9 through 14 and 16 and 17
17 of P.L. , c. (C.)(pending before the Legislature as this bill):

18 "Board" means a professional and occupational licensing board
19 within the Division of Consumer Affairs in the Department of Law and
20 Public Safety which licenses or otherwise authorizes a health care
21 professional to practice a health care profession.

22 "Division" means the Division of Consumer Affairs in the
23 Department of Law and Public Safety;

24 "Health care entity" means a health care facility licensed pursuant
25 to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance
26 organization authorized to operate pursuant to P.L.1973, c.337
27 (C.26:2J-1 et seq.), a carrier which offers a managed care plan
28 regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or
29 county psychiatric hospital, a State developmental center, a staffing
30 registry, and a home care services agency as defined in section 1 of
31 P.L.1947, c.262 (C.45:11-23).

32 "Health care professional" means a person licensed or otherwise
33 authorized pursuant to Title 45 or Title 52 of the Revised Statutes to
34 practice a health care profession that is regulated by the Director of
35 the Division of Consumer Affairs or by one of the following boards:
36 the State Board of Medical Examiners, the New Jersey Board of
37 Nursing, the New Jersey State Board of Dentistry, the New Jersey
38 State Board of Optometrists, the New Jersey State Board of
39 Pharmacy, the State Board of Chiropractic Examiners, the
40 Acupuncture Examining Board, the State Board of Physical Therapy,
41 the State Board of Respiratory Care, the Orthotics and Prosthetics
42 Board of Examiners, the State Board of Psychological Examiners, the
43 State Board of Social Work Examiners, the State Board of Veterinary
44 Medical Examiners, the State Board of Examiners of Ophthalmic
45 Dispensers and Ophthalmic Technicians, the Audiology and Speech-
46 Language Pathology Advisory Committee, the State Board of

1 Marriage and Family Therapy Examiners, the Occupational Therapy
2 Advisory Council and the Certified Psychoanalysts Advisory
3 Committee.

4 "Licensee" means an individual who has been issued a license or
5 other authorization to practice a health care profession.

6 "Review panel" means the Medical Practitioner Review Panel
7 established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8).

8

9 10. (New section) A health care entity, health care professional or
10 any other person who provides to the division, a board or the review
11 panel, in good faith and without malice, any information concerning an
12 act by a health care professional which the person has reasonable cause
13 to believe involves misconduct that may be subject to disciplinary
14 action by the division, board or review panel, as applicable, or any
15 information relating to such conduct requested by the division, board
16 or review panel in the exercise of its statutory responsibilities or which
17 may be required by statute, shall not be liable for civil damages in any
18 cause of action arising out of the provision of such information or
19 services.

20

21 11. (New section) Any information provided to the division or a
22 board concerning the conduct of a health care professional, pursuant
23 to section 2 of P.L. , c. (C.)(pending before the Legislature as this
24 bill), section 5 of P.L.1978, c.73 (C.45:1-18) or any other provision
25 of law, shall be treated as confidential pending final disposition of the
26 inquiry or investigation, except for that information required to be
27 shared with the Attorney General, Department of Health and Senior
28 Services or any other government agency.

29 If the result of the inquiry or investigation is a finding of no basis
30 for disciplinary action, the information shall remain confidential,
31 except that the board or division, as applicable, may release the
32 information to a government agency to facilitate the discharge of its
33 public responsibilities.

34 The provisions of this section shall not apply to information that the
35 division, or its designated agent, is required to include in a physician's
36 profile pursuant to P.L.2003, c.96 (C.45:9-22.21 et seq.).

37

38 12. (New section) a. A health care professional shall promptly
39 notify the division if that health care professional is in possession of
40 information which reasonably indicates that another health care
41 professional has demonstrated an impairment, gross incompetence or
42 unprofessional conduct which would present an imminent danger to an
43 individual patient or to the public health, safety or welfare. A health
44 care professional who fails to so notify the division is subject to
45 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
46 of P.L.1978, c.73 (C.45:1-21, 45:1-22 and 45:1-25).

1 b. A health care professional shall be deemed to have satisfied the
2 reporting requirement concerning another health care professional's
3 impairment by promptly providing notice to the division, the board or
4 a professional assistance or intervention program approved or
5 designated by the division or a board to provide confidential oversight
6 of the licensee.

7 c. (1) There shall be no private right of action against a health care
8 professional for failure to comply with the notification requirements of
9 this section.

10 (2) There shall be no private right of action against a health care
11 entity if a health care professional who is employed by, under contract
12 to render professional services to, or has privileges granted by, that
13 health care entity, or who provides such services pursuant to an
14 agreement with a health care services firm or staffing registry, fails to
15 comply with the notification requirements of this section.

16 d. A health care professional who provides notification to the
17 division, board or review panel, in good faith and without malice,
18 about a health care professional who is impaired or grossly
19 incompetent or who has demonstrated unprofessional conduct,
20 pursuant to this section, is not liable for civil damages to any person
21 in any cause of action arising out of the notification.

22 e. Notwithstanding the provisions of this section to the contrary,
23 a health care professional is not required to provide notification
24 pursuant to this section about an impaired or incompetent health care
25 professional if the health care professional's knowledge of the other
26 health care professional's impairment or incompetence was obtained as
27 a result of rendering treatment to that health care professional.

28

29 13. (New section) a. Upon receipt of notice from a health care
30 entity, or any employee thereof, pursuant to section 2 of P.L. ,c. (C.)
31 (pending before the Legislature as this bill), notice from a health care
32 professional pursuant to section 12 of P.L. , c. (C.)(pending before
33 the Legislature as this bill) or information concerning the conduct of
34 a health care professional pursuant to section 10 of P.L. , c. (C.)
35 (pending before the Legislature as this bill), the division shall promptly
36 notify the board that issued the license or other authorization to
37 practice to the person to whom the notice relates.

38 The division or board, as applicable, shall initiate an investigation
39 concerning the information received and obtain any additional
40 information that may be necessary in order to determine if disciplinary
41 charges should be pursued or if an application to temporarily suspend
42 or otherwise limit the health care professional's license or other
43 authorization to practice should be initiated.

44 b. The division or the board may seek the assistance of a consultant
45 or other knowledgeable person in evaluating the information and may
46 request the board or the Attorney General to exercise investigative

1 powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the
2 conduct of its investigation.

3 c. If the Attorney General files charges based on information
4 derived from the notice from a health care entity or if the board
5 revokes or permanently or temporarily suspends or otherwise limits
6 the license or other authorization to practice of a health care
7 professional, the board shall notify each health care entity with which
8 the health care professional is affiliated.

9

10 14. (New section) Any health care professional seeking to become
11 employed by, enter into a contract to render professional services to,
12 or obtain privileges at, a health care entity, or provide professional
13 services pursuant to an agreement with a health care services firm or
14 staffing registry, who engages in fraud, misrepresentation or deception
15 in the application or credentialing process shall be subject to
16 disciplinary proceedings, pursuant to section 8 of P.L.1978, c.73
17 (C.45:1-21).

18

19 15. (New section) a. A health care entity, upon the inquiry of
20 another health care entity, shall truthfully:

21 (1) disclose whether, within the seven years preceding the inquiry,
22 it provided any notice to the division pursuant to section 2 of P.L. , c.
23 (C.) (pending before the Legislature as this bill), or to the review
24 panel, as required by section 3 of P.L.1989, c.300 (C.26:2H-12.2a),
25 with respect to the health care professional about whom the inquiry
26 has been made, providing a copy of the form of notification and any
27 supporting documentation that was provided to the division, a
28 professional or occupational licensing board in the Division of
29 Consumer Affairs in the Department of Law and Public Safety, or the
30 review panel; and

31 (2) provide information about a current or former employee's job
32 performance as it relates to patient care, as provided in this section,
33 and, in the case of a former employee, the reason for the employee's
34 separation.

35 b. For the purposes of this section, "job performance" shall relate
36 to the suitability of the employee for re-employment at a health care
37 entity, and the employee's skills and abilities as they relate to suitability
38 for future employment at a health care entity. Information about a
39 current or former employee's job performance pursuant to this
40 paragraph shall be based on the employee's performance evaluation,
41 and provided to another health care entity only if: (1) the evaluation
42 has been signed by the evaluator and shared with the employee; (2) the
43 employee has had the opportunity to respond; and (3) the employee's
44 response, if any, has been taken into consideration when providing the
45 information to another health care entity.

46 Job performance as it relates to patient care shall not include the

1 current or former employee's participation in labor activities pursuant
2 to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

3 c. A health care entity, or any employee designated by the entity,
4 which, pursuant to this section, provides information in good faith and
5 without malice to another health care entity concerning a health care
6 professional, including information about a current or former
7 employee's job performance as it relates to patient care, is not liable
8 for civil damages in any cause of action arising out of the provision or
9 reporting of the information.

10 d. A health care entity which fails to truthfully disclose information
11 to another health care entity making an inquiry pursuant to this section
12 or fails to cooperate with such request for information by the other
13 health care entity shall be subject to such penalties as the Department
14 of Health and Senior Services may determine pursuant to section 13
15 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16
16 of P.L.1997, c.192 (C.26:2S-16), or the director shall determine
17 pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.

18

19 16. (New section) a. A health care professional employed by or
20 practicing at a health care entity shall promptly notify the person at the
21 entity, who is designated by that entity, if the health care professional
22 is in possession of information which reasonably indicates that another
23 health care professional who is employed by or practicing at the entity
24 has demonstrated an impairment, gross incompetence or
25 unprofessional conduct which would present an imminent danger to an
26 individual patient or to the public health, safety or welfare.

27 b. A health care professional who provides information pursuant
28 to this section, in good faith and without malice, shall not be liable for
29 civil damages in any cause of action arising out of the provision of
30 such information.

31 c. The reporting requirement in this section shall be in addition to
32 the reporting requirement for health care professionals established in
33 section 12 of P.L. , c. (C.)(pending before the Legislature as this
34 bill).

35

36 17. (New section) a. The Division of Consumer Affairs in the
37 Department of Law and Public Safety shall employ a full-time Health
38 Care Professional Information Clearinghouse Coordinator to assist the
39 Director of the Division of Consumer Affairs in compiling and
40 disseminating to the appropriate licensing board or other applicable
41 entity the information reported to the division by health care entities
42 and professionals pursuant to this act and such other information as
43 specified by the director.

44 b. The director shall provide that the professional and occupational
45 licensing boards which license or otherwise authorize a health care
46 professional to practice a health care profession with professional and

1 administrative staff as may be needed to carry out the purposes of this
2 act.

3
4 18. Section 3 of P.L.2003, c.96 (C.45:9-22.23) is amended to read
5 as follows:

6 3. a. The following information shall be included for each profile
7 of a physician, podiatrist or optometrist, as applicable:

8 (1) Name of all medical or optometry schools attended and dates
9 of graduation;

10 (2) Graduate medical or optometry education, including all
11 internships, residencies and fellowships;

12 (3) Year first licensed;

13 (4) Year first licensed in New Jersey;

14 (5) Location of the physician's, podiatrist's or optometrist's office
15 practice site or sites, as applicable;

16 (6) A description of any criminal convictions for crimes of the first,
17 second, third or fourth degree within the most recent 10 years. For
18 the purposes of this paragraph, a person shall be deemed to be
19 convicted of a crime if the individual pleaded guilty or was found or
20 adjudged guilty by a court of competent jurisdiction. The description
21 of criminal convictions shall not include any convictions that have been
22 expunged. The following statement shall be included with the
23 information about criminal convictions: "Information provided in this
24 section may not be comprehensive. Courts in New Jersey are required
25 by law to provide information about criminal convictions to the State
26 Board of Medical Examiners (or the New Jersey State Board of
27 Optometrists).";

28 (7) A description of any final board disciplinary actions within the
29 most recent 10 years, except that any such disciplinary action that is
30 being appealed shall be identified;

31 (8) A description of any final disciplinary actions by appropriate
32 licensing boards in other states within the most recent 10 years, except
33 that any such disciplinary action that is being appealed shall be
34 identified. The following statement shall be included with the
35 information about disciplinary actions in other states: "Information
36 provided in this section may not be comprehensive. The State Board
37 of Medical Examiners (or the New Jersey State Board of
38 Optometrists) receives information about disciplinary actions in other
39 states from physicians (or optometrists) themselves and outside
40 sources.";

41 (9) In the case of physicians and podiatrists, a description of: the
42 revocation or involuntary restriction of privileges at a health care
43 facility for reasons related to the practitioner's competence or
44 misconduct or impairment taken by a health care facility's governing
45 body or any other official of the health care facility after procedural
46 due process has been afforded; the resignation from or nonrenewal of

1 medical staff membership at the health care facility for reasons related
2 to the practitioner's competence or misconduct or impairment; or the
3 restriction of privileges at a health care facility taken in lieu of or in
4 settlement of a pending disciplinary case related to the practitioner's
5 competence or misconduct or impairment. Only those cases that have
6 occurred within the most recent 10 years and that were reported by the
7 health care facility pursuant to section [1 of P.L.1983, c.247
8 (C.26:2H-12.2)] 2 of P.L. , c. (C.)(pending before the Legislature
9 as this bill) shall be included in the profile; and

10 (10) All medical malpractice court judgments and all medical
11 malpractice arbitration awards reported to the applicable board, in
12 which a payment has been awarded to the complaining party during the
13 most recent five years, and all settlements of medical malpractice
14 claims reported to the board, in which a payment is made to the
15 complaining party within the most recent five years, as follows:

16 (a) Pending medical malpractice claims shall not be included in the
17 profile and information on pending medical malpractice claims shall
18 not be disclosed to the public;

19 (b) A medical malpractice judgment that is being appealed shall be
20 so identified;

21 (c) The context in which the payment of a medical malpractice
22 claim occurs shall be identified by categorizing the number of
23 judgments, arbitration awards and settlements against the physician,
24 podiatrist or optometrist into three graduated categories: average,
25 above average and below average number of judgments, arbitration
26 awards and settlements. These groupings shall be arrived at by
27 comparing the number of an individual physician's, podiatrist's or
28 optometrist's medical malpractice judgments, arbitration awards and
29 settlements to the experience of other physicians, podiatrists or
30 optometrists within the same speciality. In addition to any information
31 provided by a physician, podiatrist or optometrist, an insurer or
32 insurance association authorized to issue medical malpractice liability
33 insurance in the State shall, at the request of the division, provide data
34 and information necessary to effectuate this subparagraph; and

35 (d) The following statement shall be included with the information
36 concerning medical malpractice judgments, arbitration awards and
37 settlements: "Settlement of a claim and, in particular, the dollar
38 amount of the settlement may occur for a variety of reasons, which do
39 not necessarily reflect negatively on the professional competence or
40 conduct of the physician (or podiatrist or optometrist). A payment in
41 settlement of a medical malpractice action or claim should not be
42 construed as creating a presumption that medical malpractice has
43 occurred."

44 b. If requested by a physician, podiatrist or optometrist, the
45 following information shall be included in a physician's, podiatrist's or
46 optometrist's profile:

1 (1) Names of the hospitals where the physician, podiatrist or
2 optometrist has privileges;

3 (2) Appointments of the physician or podiatrist to medical school
4 faculties, or the optometrist to optometry school faculties, within the
5 most recent 10 years;

6 (3) Information regarding any board certification granted by a
7 specialty board or other certifying entity recognized by the American
8 Board of Medical Specialties, the American Osteopathic Association
9 or the American Board of Podiatric Medicine or by any other national
10 professional organization that has been demonstrated to have
11 comparable standards;

12 (4) Information regarding any translating services that may be
13 available at the physician's, podiatrist's or optometrist's office practice
14 site or sites, as applicable, or languages other than English that are
15 spoken by the physician, podiatrist or optometrist;

16 (5) Information regarding whether the physician, podiatrist or
17 optometrist participates in the Medicaid program or accepts
18 assignment under the Medicare program;

19 (6) Information regarding the medical insurance plans in which the
20 physician, podiatrist or optometrist is a participating provider;

21 (7) Information concerning the hours during which the physician,
22 podiatrist or optometrist conducts his practice; and

23 (8) Information concerning accessibility of the practice site or sites,
24 as applicable, to persons with disabilities.

25 The following disclaimer shall be included with the information
26 supplied by the physician, podiatrist or optometrist pursuant to this
27 subsection: "This information has been provided by the physician (or
28 podiatrist or optometrist) but has not been independently verified by
29 the State Board of Medical Examiners (or the New Jersey State Board
30 of Optometrists) or the Division of Consumer Affairs."

31 If the physician, podiatrist or optometrist includes information
32 regarding medical insurance plans in which the practitioner is a
33 participating provider, the following disclaimer shall be included with
34 that information: "This information may be subject to change. Contact
35 your health benefits plan to verify if the physician (or podiatrist or
36 optometrist) currently participates in the plan."

37 c. Before a profile is made available to the public, each physician,
38 podiatrist or optometrist shall be provided with a copy of his profile.
39 The physician, podiatrist or optometrist shall be given 30 calendar
40 days to correct a factual inaccuracy that may appear in the profile and
41 so advise the Division of Consumer Affairs or its designated agent;
42 however, upon receipt of a written request that the division or its
43 designated agent deems reasonable, the physician, podiatrist or
44 optometrist may be granted an extension of up to 15 calendar days to
45 correct a factual inaccuracy and so advise the division or its designated
46 agent.

1 d. If new information or a change in existing information is
2 received by the division concerning a physician, podiatrist or
3 optometrist, the physician, podiatrist or optometrist shall be provided
4 with a copy of the proposed revision and shall be given 30 calendar
5 days to correct a factual inaccuracy and to return the corrected
6 information to the division or its designated agent.

7 e. The profile and any revisions thereto shall not be made available
8 to the public until after the review period provided for in this section
9 has lapsed.

10 (P.L.2004, c.115, s.6)

11
12 19. a. The Director of the Division of Consumer Affairs in the
13 Department of Law and Public Safety shall adopt rules and regulations
14 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
15 (C.52:14B-1 et seq.) to carry out the purposes of this act.

16 b. The Commissioner of Health and Senior Services shall adopt
17 rules and regulations pursuant to the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this
19 act.

20
21 20. The following are repealed:

22 Section 1 of P.L.1983, c.247 (C.26:2H-12.2);

23 Section 1 of P.L.1983, c.248 (C.45:9-19.1);

24 Section 3 of P.L.1983, c.248 (C.45:9-19.3); and

25 Section 5 of P.L.1989, c.300 (C.45:9-19.5).

26
27 21. This act shall take effect on the 180th day after enactment, but
28 the Commissioner of Health and Senior Services and the Director of
29 the Division of Consumer Affairs in the Department of Law and Public
30 Safety may take such anticipatory administrative action in advance as
31 shall be necessary for the implementation of the act.

32
33
34 STATEMENT

35
36 This bill revises and strengthens reporting requirements of health
37 care facilities, managed care plans and certain other employers of
38 health care professionals regarding disciplinary actions taken by the
39 entity against a health care professional for reasons related to that
40 professional's impairment or his incompetency or professional
41 misconduct. Also, all licensed health care professionals will be
42 required to undergo a criminal history record background check as a
43 condition of renewal of their professional license. The bill requires
44 health care professionals to report information about an impairment or
45 gross incompetence or unprofessional conduct of another health care
46 professional to State authorities and their employer, when applicable.

1 Also, certain employers of health care professionals will be required,
2 upon the inquiry of another employer, to truthfully disclose certain
3 information concerning the professional's job performance.

4 Specifically, the bill:

5 C Requires health care facilities, managed care plans, State and
6 county psychiatric hospitals, State developmental centers and home
7 care services agencies and staffing registries (hereafter referred to
8 as "health care entities") to report certain disciplinary actions taken
9 against a health care professional to the Director of the Division of
10 Consumer Affairs, which has jurisdiction over the State's
11 professional and occupational licensing boards. The actions that
12 must be reported relate to a health care professional's impairment,
13 incompetency or professional misconduct, which incompetency or
14 misconduct relates adversely to patient care or safety. The actions
15 include, but are not limited to: a revocation or suspension of
16 privileges or discharge from the staff of the entity; the placing of
17 conditions or limitations on the exercise of clinical privileges or
18 practice; voluntary resignation from the staff under certain
19 circumstances; voluntary relinquishment of any partial privilege or
20 authorization to perform a specific procedure under certain
21 circumstances; and the granting of a leave of absence under certain
22 circumstances. The entity also shall report to the division if the
23 professional is a party to a medical malpractice liability suit, to
24 which the entity is also a party, and in which there is a settlement,
25 judgment or award.

26 The bill also provides that the entity shall notify the board if the
27 conditions or limitations on the exercise of clinical privileges or
28 practice are altered or restored. The entity shall also provide a copy
29 of the notice it sends to the division, to the professional who is a
30 subject of the notice.

31 C Requires the entity to notify the division if it is in possession of
32 information that indicates a health care professional has failed to
33 comply with a request to seek assistance from a division or board-
34 approved professional assistance program, or has failed to follow
35 the required treatment regimen or monitoring program, to assure
36 that the professional's physical, mental or emotional condition or
37 substance abuse does not impair the professional's ability to practice
38 with reasonable skill and safety.

39 C Provides that an entity that notifies the division or a licensing
40 board, in good faith and without malice, is not liable for civil
41 damages in any cause of action arising out of the provision of the
42 required information. The bill also provides that an entity which
43 fails to provide the required notices may be subject to such
44 penalties as the Department of Health and Senior Services
45 determines.

46 C Defines "health care professional" to mean: a person licensed or

- 1 otherwise authorized pursuant to Title 45 or Title 52 of the Revised
2 Statutes to practice a health care profession that is regulated by the
3 Director of the Division of Consumer Affairs or by one of the
4 following boards: the State Board of Medical Examiners, the New
5 Jersey Board of Nursing, the New Jersey State Board of Dentistry,
6 the New Jersey State Board of Optometrists, the New Jersey State
7 Board of Pharmacy, the State Board of Chiropractic Examiners, the
8 Acupuncture Examining Board, the State Board of Physical
9 Therapy, the State Board of Respiratory Care, the Orthotics and
10 Prosthetics Board of Examiners, the State Board of Psychological
11 Examiners, the State Board of Social Work Examiners, the State
12 Board of Veterinary Medical Examiners, the State Board of
13 Examiners of Ophthalmic Dispensers and Ophthalmic Technicians,
14 the Audiology and Speech-Language Pathology Advisory
15 Committee, the State Board of Marriage and Family Therapy
16 Examiners, the Occupational Therapy Advisory Council and the
17 Certified Psychoanalysts Advisory Committee. "Health care
18 professional" also includes a nurse aide and personal care assistant
19 certified by the Department of Health and Senior Services.
- 20 **C** Amends N.J.S.A.26:2H-12.2a (which requires health care facilities
21 and HMOs to maintain records of documented complaints and
22 disciplinary actions taken against a physician) to apply to all health
23 care entities regarding all health care professionals.
- 24 **C** Amends N.J.S.A.45:1-28 et seq. (which requires health care
25 professionals to undergo criminal history record background checks
26 prior to becoming licensed or otherwise authorized by the State to
27 practice a health care profession) to extend this background check
28 requirement, over a four-year period, to current licensees upon
29 renewal of their license or authorization to practice. Because of
30 the large number of licensees who will have to undergo the
31 background check, the bill provides that the Director of Consumer
32 Affairs shall establish, by regulation, a schedule of dates by which
33 the background check shall be implemented for each of the boards.
- 34 **C** Provides that if a licensee refuses to consent to, or cooperate in, the
35 securing of a criminal history record background check as required
36 in this bill, the board or director, as applicable, shall refuse to renew
37 the license or other authorization of the licensee, without a hearing,
38 and shall notify the licensee of that denial.
- 39 **C** Provides immunity to any person (including a health care entity and
40 a health care professional) who provides to the division, a licensing
41 board or the Medical Practitioner Review Panel, in good faith and
42 without malice, any information concerning an act by a health care
43 professional which the person has reasonable cause to believe
44 involves misconduct that may be subject to disciplinary action by
45 the division, board or review panel, as applicable, or any
46 information relating to such conduct requested by the division,

- 1 board or review panel in the exercise of its statutory responsibilities
2 or which may be required by statute.
- 3 C Provides that any information provided to the division or a licensing
4 board concerning the conduct of a health care professional as
5 required by law, shall be treated as confidential pending final
6 disposition of the inquiry or investigation by the board or division,
7 as applicable, except for that information required to be shared with
8 the Attorney General, Department of Health and Senior Services or
9 any other government agency.
- 10 C Requires a health care professional to promptly notify the division
11 if that health care professional is in possession of information which
12 reasonably indicates that another health care professional has
13 demonstrated an impairment, gross incompetence or unprofessional
14 conduct which would present an imminent danger to an individual
15 patient or to the public health, safety or welfare. A health care
16 professional shall be deemed to have satisfied the reporting
17 requirement by promptly providing notice to the division, the board
18 or a professional assistance or intervention program approved or
19 designated by the division or a board to provide confidential
20 oversight of the licensee. A health care professional who fails to so
21 notify the division is subject to disciplinary action and civil
22 penalties; however, a health care professional is not required to
23 notify the division about an impaired or incompetent health care
24 professional if the health care professional's knowledge of the other
25 professional's impairment or incompetence was obtained as a result
26 of rendering treatment to that professional. The bill provides
27 immunity to a health care professional who provides the required
28 notification, in good faith and without malice to the division, board
29 or review panel. Further, the bill provides that there shall be no
30 private right of action against a health care professional for failure
31 to comply with these reporting requirements, or against a health
32 care entity if a health care professional employed by, under contract
33 to, or has privileges granted by, the entity fails to comply with the
34 reporting requirements.
- 35 C Provides that upon receipt of notice from a health care entity or
36 health care professional concerning the conduct of a health care
37 professional, the division shall promptly notify the appropriate
38 licensing board. The division or board, as applicable, shall initiate
39 an investigation and obtain any additional information necessary to
40 determine if disciplinary charges should be pursued or if an
41 application to temporarily suspend or otherwise limit the health care
42 professional's license or other authorization to practice should be
43 initiated. If the Attorney General files charges based on
44 information derived from the notice from a health care entity or if
45 the board revokes or permanently or temporarily suspends or
46 otherwise limits the license or other authorization to practice of a

1 health care professional, the board shall notify each health care
2 entity with which the health care professional is affiliated.

3 C Requires that any health care professional seeking to become
4 employed by, enter into a contract to render professional services
5 to or obtain privileges at a health care entity, or provide
6 professional services pursuant to an agreement with a health care
7 services firm or staffing registry, who engages in fraud,
8 misrepresentation or deception in the application or credentialing
9 process shall be subject to disciplinary proceedings pursuant to
10 N.J.S.A.45:1-21.

11 C Provides that a health care entity, upon the inquiry of another
12 health care entity, shall truthfully: (1) disclose whether, within the
13 seven years preceding the inquiry, it provided any notice to the
14 division or the review panel, pursuant to reporting requirements for
15 health care entities established in this bill, with respect to the health
16 care professional about whom the inquiry has been made; and (2)
17 provide information about a current or former employee's job
18 performance as it relates to patient care and, in the case of a former
19 employee, the reason for the employee's separation.

20 The bill specifies that "job performance" shall relate to the
21 suitability of the employee for re-employment at a health care
22 entity, and the employee's skills and abilities as they relate to
23 suitability for future employment at a health care entity. This
24 information shall be based on the employee's performance
25 evaluation, and shall be provided to another health care entity only
26 if: (1) the evaluation has been signed by the evaluator and shared
27 with the employee; (2) the employee has had the opportunity to
28 respond; and (3) the employee's response, if any, has been taken
29 into consideration when providing the information to another health
30 care entity. Job performance as it relates to patient care shall not
31 include the current or former employee's participation in labor
32 activities pursuant to the "National Labor Relations Act," 29 U.S.C.
33 s.151 et seq.

34 The bill also provides that a health care entity, or any employee
35 designated by the entity, who provides the required information to
36 another health care entity, in good faith and without malice, is not
37 liable for damages in any cause of action for providing or reporting
38 the information. Also, a health care entity which fails to truthfully
39 disclose information to another health care entity making an inquiry
40 pursuant to this bill or fails to cooperate with the request for
41 information by the other health care entity shall be subject to such
42 penalties as the Department of Health and Senior Services or the
43 Director of Consumer Affairs determines appropriate.

44 C Requires a health care professional employed by or practicing at a
45 health care entity to promptly notify the person at the entity,
46 designated by that entity, if the health care professional is in

- 1 possession of information which reasonably indicates that another
2 health care professional who is employed by or practicing at the
3 entity has demonstrated an impairment, gross incompetence or
4 unprofessional conduct which would present an imminent danger to
5 an individual patient or to the public health, safety or welfare, and
6 provides immunity to that health care professional for notifying the
7 entity, in good faith and without malice.
- 8 C Provides that:
- 9 - the Division of Consumer Affairs shall employ a full-time
10 Health Care Professional Information Clearinghouse Coordinator
11 to assist the Director of the Division of Consumer Affairs in
12 compiling and disseminating to the appropriate licensing board or
13 other applicable entity the information reported to the division by
14 health care entities and professionals pursuant to this bill and such
15 other information as specified by the director; and
- 16 - the director shall provide the licensing boards with
17 professional and administrative staff as may be needed to carry out
18 the purposes of the bill.
- 19 C Repeals the following sections of law, whose provisions are
20 incorporated in the new sections of the bill:
- 21 - N.J.S.A.26:2H-12.2, which requires health care facilities and
22 health maintenance organizations to report certain disciplinary
23 actions taken against physicians and podiatrists to the State Board
24 of Medical Examiners (BME);
- 25 - N.J.S.A.45:9-19.1, which provides immunity to a person who in
26 good faith provides information to the BME concerning the
27 conduct of a physician;
- 28 - N.J.S.A.45:9-19.3, which provides that information concerning
29 the conduct of a physician is confidential pending final disposition
30 by the BME; and
- 31 - N.J.S.A.45:9-19.5, which requires physicians to notify the Board
32 of Medical Examiners if they are in possession of information that
33 indicates another physician is impaired, incompetent or
34 demonstrates unprofessional conduct, and provides immunity for
35 the notification.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3533

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2005

The Assembly Health and Human Services Committee reports favorably Assembly Bill No. 3533.

This bill, which is designated the "Health Care Professional Responsibility and Reporting Enhancement Act," is designed to strengthen patient protections against health care professionals who have demonstrated impairment or incompetence or engaged in professional misconduct.

The bill:

-- revises and strengthens reporting requirements of certain entities that employ health care professionals regarding disciplinary actions taken by the entity against a health care professional for reasons related to that professional's impairment or his incompetency or professional misconduct;

-- requires all licensed health care professionals to undergo a criminal history record background check as a condition of renewal of their professional license, and to report information about an impairment or gross incompetence or unprofessional conduct of another health care professional to State authorities and their employer, when applicable; and

-- requires certain employers of health care professionals, upon the inquiry of another employer, to truthfully disclose certain information concerning the professional's job performance.

Specifically, the bill provides as follows:

C Health care facilities, managed care plans, State and county psychiatric hospitals, State developmental centers and home care services agencies and staffing registries (hereafter referred to as "health care entities") are to report certain disciplinary actions taken against a health care professional to the Director of the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety, which has jurisdiction over State professional and occupational licensing boards.

-- The actions that must be reported relate to a health care professional's impairment, incompetency or professional misconduct that relates adversely to patient care or safety. The actions include, but are not limited to: a revocation or suspension of privileges or discharge from the staff of the health care entity; the placing of conditions or limitations on the exercise of clinical privileges or

practice; voluntary resignation from the staff under certain circumstances; voluntary relinquishment of any partial privilege or authorization to perform a specific procedure under certain circumstances; and the granting of a leave of absence under certain circumstances.

-- The health care entity must report to DCA if the professional is a party to a medical malpractice liability suit, to which the health care entity is also a party, and in which there is a settlement, judgment or award.

-- The health care entity must notify DCA if the conditions or limitations on the exercise of clinical privileges or practice are altered or restored, and provide a copy of the notice that it sends to DCA to the professional who is a subject of the notice.

C The health care entity is to notify DCA if it is in possession of information that indicates a health care professional has failed to comply with a request to seek assistance from a DCA or board-approved professional assistance program, or has failed to follow the required treatment regimen or monitoring program, to assure that the professional's physical, mental or emotional condition or substance abuse does not impair the professional's ability to practice with reasonable skill and safety.

C A health care entity that notifies DCA or a licensing board, in good faith and without malice, is not liable for civil damages in any cause of action arising out of the provision of the required information. An entity which fails to provide the required notices may be subject to such penalties as the Department of Health and Senior Services determines.

C "Health care professional" is defined to mean: a person licensed or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a health care profession that is regulated by the Director of DCA or by one of the following boards: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee. "Health care professional" also includes a nurse aide and personal care assistant certified by the Department of Health and Senior Services.

C The bill amends:

-- N.J.S.A.26:2H-12.2a (which requires health care facilities and HMOs to maintain records of documented complaints and disciplinary actions taken against a physician) to apply to all health care entities regarding all health care professionals; and

-- N.J.S.A.45:1-28 et seq., which requires health care professionals to undergo criminal history record background checks prior to becoming licensed or otherwise authorized by the State to practice a health care profession, to extend its background check requirement, over a four-year period, to current licensees upon renewal of their license or authorization to practice.

C If a licensee refuses to consent to, or cooperate in, the securing of a criminal history record background check as required in this bill, the board or director, as applicable, is to refuse to renew the license or other authorization of the licensee, without a hearing, and to notify the licensee of that denial.

C A person (including a health care entity and a health care professional) is granted immunity for providing to DCA, a licensing board or the Medical Practitioner Review Panel, in good faith and without malice, any information concerning an act by a health care professional which the person has reasonable cause to believe involves misconduct that may be subject to disciplinary action by DCA, the board or review panel, as applicable, or any information relating to such conduct requested by DCA, the board or review panel in the exercise of its statutory responsibilities or which may be required by statute.

C Any information provided to DCA or a licensing board concerning the conduct of a health care professional as required by law, is to be treated as confidential pending final disposition of the inquiry or investigation by the board or DCA, as applicable, except for information required to be shared with the Attorney General, Department of Health and Senior Services or any other government agency.

C A health care professional is to promptly notify DCA if that health care professional is in possession of information which reasonably indicates that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare.

-- A health care professional will be deemed to have satisfied the reporting requirement by promptly providing notice to DCA, the board or a professional assistance or intervention program approved or designated by DCA or a board to provide confidential oversight of the licensee.

-- A health care professional who fails to so notify DCA is subject to disciplinary action and civil penalties; however, a health care professional is not required to notify DCA about an impaired or incompetent health care professional if the health care professional's

knowledge of the other professional's impairment or incompetence was obtained as a result of rendering treatment to that professional.

-- A health care professional is granted immunity for providing the required notification, in good faith and without malice to DCA, the board or review panel; and there is to be no private right of action against a health care professional for failure to comply with these reporting requirements, or against a health care entity if a health care professional employed by, under contract to, or who has privileges granted by, the health care entity fails to comply with the reporting requirements.

C Upon receipt of notice from a health care entity or health care professional concerning the conduct of a health care professional, DCA is to promptly notify the appropriate licensing board.

-- DCA or the board, as applicable, is to initiate an investigation and obtain any additional information necessary to determine if disciplinary charges should be pursued or if an application to temporarily suspend or otherwise limit the health care professional's license or other authorization to practice should be initiated.

-- If the Attorney General files charges based on information derived from the notice from a health care entity or if the board revokes or permanently or temporarily suspends or otherwise limits the license or other authorization to practice of a health care professional, the board is to notify each health care entity with which the health care professional is affiliated.

C Any health care professional seeking to become employed by, enter into a contract to render professional services to or obtain privileges at a health care entity, or provide professional services pursuant to an agreement with a health care services firm or staffing registry, who engages in fraud, misrepresentation or deception in the application or credentialing process is to be subject to disciplinary proceedings pursuant to N.J.S.A.45:1-21.

C A health care entity, upon the inquiry of another health care entity, is required to truthfully: (1) disclose whether, within the seven years preceding the inquiry, it provided any notice to DCA or the review panel, pursuant to reporting requirements for health care entities established in the bill, with respect to the health care professional about whom the inquiry has been made; and (2) provide information about a current or former employee's job performance as it relates to patient care and, in the case of a former employee, the reason for the employee's separation.

-- The bill specifies that "job performance" relates to the suitability of the employee for re-employment at a health care entity, and the employee's skills and abilities as they relate to suitability for future employment at a health care entity. This information is to be based on the employee's performance evaluation, and is to be provided to another health care entity only if: (1) the evaluation has been signed by the evaluator and shared with the employee; (2) the employee has had the opportunity to

respond; and (3) the employee's response, if any, has been taken into consideration when providing the information to another health care entity. Job performance as it relates to patient care is not to include the current or former employee's participation in labor activities pursuant to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

-- A health care entity, or any employee designated by the entity, who provides the required information to another health care entity, in good faith and without malice, is not liable for damages in any cause of action for providing or reporting the information.

-- A health care entity which fails to truthfully disclose information to another health care entity making an inquiry pursuant to this bill or fails to cooperate with the request for information by the other health care entity is to be subject to such penalties as the Department of Health and Senior Services or the Director of DCA determines appropriate.

C A health care professional employed by or practicing at a health care entity is required to promptly notify the person at the entity, designated by that entity, if the health care professional is in possession of information which reasonably indicates that another health care professional who is employed by or practicing at the entity has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety or welfare, and provides immunity to that health care professional for notifying the entity, in good faith and without malice.

C DCA is to employ a full-time Health Care Professional Information Clearinghouse Coordinator to assist the Director of DCA in compiling and disseminating to the appropriate licensing board or other applicable entity the information reported to DCA by health care entities and professionals pursuant to the bill and such other information as specified by the director; and the director of DCA is to provide the licensing boards with professional and administrative staff as may be needed to carry out the purposes of the bill.

C The bill repeals the following sections of law, the provisions of which are incorporated in the new sections of the bill:

-- N.J.S.A.26:2H-12.2, which requires health care facilities and health maintenance organizations to report certain disciplinary actions taken against physicians and podiatrists to the State Board of Medical Examiners (BME);

-- N.J.S.A.45:9-19.1, which provides immunity to a person who in good faith provides information to the BME concerning the conduct of a physician;

-- N.J.S.A.45:9-19.3, which provides that information concerning the conduct of a physician is confidential pending final disposition by the BME; and

-- N.J.S.A.45:9-19.5, which requires physicians to notify the BME

if they are in possession of information that indicates another physician is impaired, incompetent or demonstrates unprofessional conduct, and provides immunity for the notification.

This bill is identical to Senate Bill No. 1804 (1R) (Vitale/Kavanaugh), which the committee also reported on this date.

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RELEASE: May 03, 2005

Codey Signs Health Care Professional Responsibility and Reporting Enhancement Act

(WOODBIDGE) – Acting Governor Richard J. Codey today signed Senate bill 1804, which strengthens reporting requirements for health care facilities, and requires all licensed health care professionals to undergo criminal history background checks. The need for these safeguards was made apparent after it was revealed that Charles Cullen, a nurse who claimed to have killed up to 40 patients under his care, was able to jump from job to job despite a questionable employment record.

“Whenever someone requires medical attention or specialized care, they place more than just their trust in the hands of our health care professionals, they place their very lives,” said Codey. “The failure to share information about Charles Cullen is a failure that can never be repeated. With this bill, that will never happen again.

Today, we are taking an important step to improve safeguards and fortify reporting requirements for our health care facilities,” Codey continued. “By fostering greater disclosure and raising the level of professional accountability, we are ensuring that patients get the care they need and the protection they deserve.”

The bill signing was held at St. Joseph’s Senior Home in Woodbridge. Codey was joined by bill sponsors Senator Joseph F. Vitale (D-Middlesex) and Assemblywoman Loretta Weinberg (D-Bergen) along with Attorney General Peter Harvey and Woodbridge Mayor Frank Pelzman.

“Today, we are putting into place the protections necessary to ensure that the atrocities committed by Charles Cullen can never happen again,” said Vitale. “Cullen's abuse of the trust we place in the medical community has shaken that trust to the core, and we must restore it through greater reporting standards and increased safeguards against negligence and malfeasance. With these reforms in place, the medical community can begin to leave the shadow of Cullen behind.”

Weinberg, chairwoman of the Assembly Health and Human Services Committee said: “Charles Cullen's wanton abuse of his position as caregiver, and his ability to maneuver through the state's health care industry undetected, is proof-positive that our medical reporting system is flawed. Patient safety must be paramount for legislators, doctors and medical facilities. The patient protections provided through this legislation will not only save lives, it will better enable the medical community to weed out problem practitioners.”

Senator Walter J. Kavanaugh (R-Morris, Somerset) and Assemblywoman Linda R. Greenstein (D-Mercer, Middlesex) are also sponsors. Co-sponsors include Senators Byron M. Baer (D-Bergen) and Peter A. Inverso (R-Mercer, Middlesex)

Known as the “Health Care Professional Responsibility and Reporting Act,” S1804 increases protections to allow medical care facilities to report to other facilities disciplinary actions taken against an employee for professional misconduct, improper patient care or other actions that impact a health care professional’s ability to practice medicine with reasonable skill and safety. The bill also requires greater disclosure from health care professionals and medical facilities to the state Division of Consumer Affairs when they have information regarding incompetence or negligence of an employee that would endanger patients. In addition, it requires criminal background checks for health care professionals as a condition of renewal of their professional license.

From 1987 to 2005, Cullen worked as a nurse at 10 hospitals in New Jersey and Pennsylvania. He was arrested on December 12, 2003, and charged with the murder of Rev. Florian Gall. Since his arrest, Cullen has claimed he killed up to 40 patients under his care over the course of his 16-year career. He has pled guilty to murdering 24 people and attempting to kill five others. By pleading guilty, he was spared the death penalty. He faces more than 127 years in New Jersey prison without parole. Criminal investigations are being conducted by the respective county Prosecutor Offices in New Jersey and District Attorney Offices in Pennsylvania. No sentence dates have been set, as investigations are ongoing.