

CHAPTER 22

AN ACT concerning the Board of Medical Examiners and amending R.S.45:9-1, P.L.1989, c.300, P.L.1995, c.69, and supplementing Title 45 of the Revised Statutes.

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

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

State Board of Medical Examiners; advisory committee.

45:9-1. The State Board of Medical Examiners, hereinafter in this chapter designated as the “board” shall consist of 21 members, one of whom shall be the Commissioner of Health and Senior Services, or his designee, three of whom shall be public members and one an executive department designee as required pursuant to section 2 of P.L.1971, c.60 (C.45:1-2.2), and 16 of whom shall be persons of recognized professional ability and honor, and shall possess a license to practice their respective professions in New Jersey, and all of whom shall be appointed by the Governor in accordance with the provisions of section 2 of P.L.1971, c.60 (C.45:1-2.2); provided, however, that said board shall consist of 12 graduates of schools of medicine or osteopathic medicine who shall possess the degree of M.D. or D.O. The number of osteopathic physicians on the board shall be a minimum of, but not limited to, two members. In addition the membership of said board shall comprise: one podiatric physician who does not possess a license to practice in any other health care profession regulated under Title 45 of the Revised Statutes; one physician assistant; one certified nurse midwife; and one licensed bio-analytical laboratory director, who may or may not be the holder of a degree of M.D. The term of office of members of the board hereafter appointed shall be three years or until their successors are appointed. A member is eligible for reappointment for one additional term of office, but no member shall serve more than two consecutive terms of office. Said appointees shall, within 30 days after receipt of their respective commissions, take and subscribe the oath or affirmation prescribed by law and file the same in the office of the Secretary of State.

The Governor shall also appoint an advisory committee to consist of four licensed bio-analytical laboratory directors, only two of whom shall possess the degree of M.D. or D.O., and who shall be appointed from a list to be submitted by the society or organization of which the persons nominated are members. The members of this advisory committee shall serve for a term of three years and until their successors are appointed and qualified, and shall be available to assist the board in the administration of the “Bio-analytical Laboratory and Laboratory Directors Act (1953),” P.L.1953, c.420 (C.45:9-42.1 et al.). The advisory committee shall meet at the call of the board. The board may authorize reimbursement of the members of the advisory committee for their actual expenses incurred in connection with the performance of their duties as members of the committee.

2. The limitation on serving no more than two consecutive terms pursuant to R.S.45:9-1 shall apply to any member newly appointed after the effective date of P.L.2011, c.22, and in the case of any member serving on the effective date of P.L.2011, c.22, the member shall be limited to two additional consecutive terms.

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

C.45:9-19.9 Notice received by review panel; actions, recommendations.

9. a. The review panel shall receive:

(1) Notice from a health care entity, provided through the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b);

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

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

c. Upon receipt of a notice or complaint pursuant to this section, the review panel shall investigate the information received, obtain any additional information that may be necessary in order to make a recommendation to the board, and make that recommendation within 90 days after receipt of the referral, except that the 90-day period shall be tolled, whenever additional time is required: to obtain information, records, or evidence sought pursuant to this section that is necessary for the review panel to make its recommendation; for the review panel to consider additional information furnished more than 30 days after receipt of the referral; for expert consultation related to the subject matter under investigation; or for other good cause shown due to extraordinary or unforeseen circumstances. In the event that the 90-day period is tolled, the review panel shall so notify the board, indicating the reason and the amount of additional time required to make its recommendation. A copy of the notice shall be transmitted to the Attorney General and the referring entity. Nothing in this subsection shall be construed to limit or otherwise impair the authority of the board to take any action against a licensee or applicant for a license, or of the review panel to make a recommendation. The review panel may seek the assistance of a consultant or other knowledgeable person, as necessary, in making its recommendation. The review panel may request the board or the Attorney General to exercise investigative powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the conduct of its investigation.

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

If the board temporarily suspends or otherwise limits the license, the board shall notify each health care entity with which the practitioner is affiliated and every practitioner in the State with which the practitioner is directly associated in his private practice.

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

(3) Notwithstanding any provision of this section to the contrary, in any case in which the board determines to conduct an investigation of a practitioner who it has reasonable cause to

believe represents an imminent danger to his patients, the board may direct the review panel to provide the board with its files pertaining to that practitioner and may direct the review panel to promptly terminate its investigation of that practitioner without making a recommendation pursuant to subsection d. of this section.

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

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

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

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

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

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

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

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

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

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

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

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

4. Section 1 of P.L.1995, c.69 (C.45:9-19.16) is amended to read as follows:

C.45:9-19.16 Physicians, report out-of-State disciplinary, criminal actions; investigation, determination.

1. a. A physician licensed by the State Board of Medical Examiners, or a physician who is an applicant for a license from the State Board of Medical Examiners, shall notify the board within 10 days of:

(1) any action taken against the physician's medical license by any other state licensing board or any action affecting the physician's privileges to practice medicine by any out-of-State hospital, health care facility, health maintenance organization or other employer;

(2) any pending or final action by any criminal authority for violations of law or regulation, or any arrest or conviction for any criminal or quasi-criminal offense pursuant to the laws of the United States, this State or another state, including, but not limited to:

(a) criminal homicide pursuant to N.J.S.2C:11-2;

(b) aggravated assault pursuant to N.J.S.2C:12-1;

(c) sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.2C:14-2 through 2C:14-4; or

(d) an offense involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes.

b. A physician who is in violation of this section is subject to disciplinary action and civil penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

c. The State Board of Medical Examiners shall notify all physicians licensed by the board of the requirements of this section within 30 days of the date of enactment of this act.

d. Upon receipt of notification from a physician pursuant to this section, the State Board of Medical Examiners shall, within 60 days, investigate the information received and obtain any additional information that may be necessary in order to make a determination whether to initiate disciplinary action against the physician. Nothing in this subsection shall be construed to limit or otherwise impair the authority of the board to take any action against a licensee or applicant for a license.

5. This act shall take effect immediately.

Approved February 3, 2011.