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LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
OFFICE OF THE DIRECTOR

**Adopted New Rules: N.J.A.C. 13:45E**

**Health Care Professional Reporting Responsibility**

Proposed: November 1, 2010 at 42 N.J.R. 2577(a).

Adopted: January 31, 2011 by Thomas R. Calcagni, Acting Director, New Jersey Division of Consumer Affairs.

Filed: February 8, 2011 as R.2011 d.079, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2005, c. 83.

Effective Date: March 7, 2011.

Expiration Date: March 7, 2016.

**Federal Standards Statement**

A Federal standards analysis is not required because the new rules are adopted pursuant to State statute and are not subject to any Federal requirements or standards.

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

CHAPTER 45E

HEALTH CARE PROFESSIONAL REPORTING RESPONSIBILITY

SUBCHAPTER 1. PURPOSE

13:45E-1.1 Purpose

The rules in this chapter provide for the interpretation and administration of the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c. 83.

SUBCHAPTER 2. DEFINITIONS

13:45E-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c. 83.

"Board" means one of the boards listed under the definition of "health care professional."

"Clearing House Coordinator" means the Division's Health Care Professional Information Clearing House Coordinator referred to in N.J.S.A. 45:1-40.

"Clinical privileges or practice" means the job responsibilities, involving patient care, treatment or diagnosis, that a health care professional is authorized and expected to perform at a health care entity.

"Conduct relating adversely to patient care or safety" means conduct that a prudent health care professional reasonably would believe could put a patient in jeopardy of physical or emotional harm. Personal conduct such as tardiness, insubordination or other similar behavior that a prudent person reasonably would believe does not have the capacity to cause physical or emotional harm to a patient shall not be deemed to be conduct relating adversely to patient care or safety. Disruptive conduct that a prudent health care professional reasonably would believe is likely to adversely affect the ability of another health care professional to safely render patient care for which he or she is responsible shall be deemed to be conduct relating adversely to patient care or safety.

"Deputy Director" means the Deputy Director of the Division of Consumer Affairs to whom the Clearing House Coordinator reports.

"Disposition" means a determination by a board, reflected in its records, to initiate formal action, to resolve a matter by consent with discipline or remedial measures, to take other measures not constituting formal action, to administratively close the matter or, to find that there is no cause for action.

"Division" means the Division of Consumer Affairs within the Department of Law and Public Safety.

"Health care entity" means a health care facility licensed pursuant to P.L. 1971, c. 136, N.J.S.A. 26:2H-1 et seq. (including, but not limited to, hospitals, ambulatory care facilities and long term care facilities); a health maintenance organization authorized to operate pursuant to P.L. 1973, c. 337, N.J.S.A. 26:2J-1 et seq.; a carrier which offers a managed care plan regulated pursuant to P.L. 1997, c. 192, N.J.S.A. 26:2S-1 et seq.; a State or county psychiatric hospital; a State developmental center; a staffing registry; and a home care services agency as defined in section 1 of P.L. 1947, c. 262, N.J.S.A. 45:11-23.

"Health care professional" means 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 a personal care assistant certified by the Department of Health and Senior Services and a homemaker home-health aide certified by the Board of Nursing.

"Imminent danger" means an unmistakable demonstration that harmful actions or outcomes may occur during the licensee's continued unrestricted practice.

"Impairment" means an inability to function at an acceptable level of competency, or lacking the capacity to continue to practice with the requisite skill, safety and judgment, as a result of alcohol or chemical use, psychiatric or emotional disorder, senility or a disabling physical disorder.

"Intervention program" means a public or private organization, which may be part of a professional association or organized as professional service corporation, which contracts with a board or the Division to provide certain services, including the identification of impairments, interventions, referrals to treatment providers, monitoring, reporting and

case management of those in rehabilitation, as well as assisting with recovery documentation, education, support and advocacy, to be performed in accordance with standards as established by a board or the Director.

"Remedial education or training" means education or training that a health care professional is required to take by a health care entity because he or she has exhibited a lack of knowledge or skills expected of a health care professional who has had the same level of education and training and the same degree of professional responsibility. "Remedial education and training" does not include a tailored educational plan for health care professionals in training programs, such as a reassignment that is part of a normal rotation within the health care entity, or additional education or training to correct a deficiency in the health care professional's performance.

"Report" means the completed written notification form used by a health care entity or a health care professional to notify the Division's Health Care Professional Information Clearing House Coordinator of the [page=652] types of reportable conduct set forth in the Act. The report form is attached as the chapter Appendix and incorporated herein by reference.

### SUBCHAPTER 3. NOTIFICATION TO THE CLEARING HOUSE COORDINATOR

#### 13:45E-3.1 Notification to the Clearing House Coordinator by a health care entity

(a) Except as provided in **[(b)] (c)** below, a health care entity shall file a report with the Clearing House Coordinator concerning a health care professional who is employed by, under contract to render professional services to, or has clinical 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 if:

1. For reasons relating to the health care professional's impairment, incompetency or professional misconduct, which incompetency or professional misconduct relates adversely to patient care or safety, the health care entity:

i. Summarily or temporarily revokes or suspends or permanently reduces, suspends or revokes the health care professional's full or partial clinical privileges **or practice**;

ii. Removes the health care professional from the list of eligible employees of a health services firm or staffing registry;

iii. Discharges the health care professional from the staff of the health care entity; or

iv. Terminates or rescinds a contract with the health care professional to render professional services;

2. The health care entity places conditions or limitations on the health care professional's exercise of clinical privileges or practice within the health care entity for reasons relating to the health care professional's impairment, incompetency or professional misconduct, which incompetency or professional misconduct relates adversely to patient care or safety, including, but not limited to, second opinion requirements, non-routine concurrent or retrospective review of admissions or care specifically tailored after a preliminary review of care, non-routine supervision by one or more members of the staff, or the completion of remedial education or training;

3. The health care professional voluntarily resigns from the staff if:

i. Whether or not known to the health care professional, the health care entity is undertaking an investigation or a review of:

(1) The quality of patient care rendered by the health care professional **to determine if the care could have had adverse consequences to the patient**;

(2) Conduct by the health care professional that demonstrates an impairment;

(3) Conduct by the health care professional that demonstrates incompetence that relates adversely to patient care or safety; or

(4) Unprofessional conduct by the health care professional that relates adversely to patient care or safety; or

ii. A body within the health care entity that has the authority to initiate an investigation that may lead to disciplinary action, has expressed an intention through any member of the medical or administrative staff, reflected in the records of the health care entity or expressed directly to the health care professional, to conduct such a review of the health care professional's patient care or conduct and the healthcare entity notifies the health care professional that the health care entity is conducting or intends to conduct the review or investigation.

4. The health care professional voluntarily relinquishes any partial clinical privilege or authorization to perform a specific procedure if:

i. Whether or not known to the health care professional, the health care entity is undertaking an investigation or a review of:

(1) The quality of patient care rendered by the health care professional **\*to determine if the care could have had adverse consequences to the patient\***;

(2) Conduct by the health care professional that demonstrates an impairment;

(3) Conduct by the health care professional that demonstrates incompetence that relates adversely to patient care or safety; or

(4) Unprofessional conduct by the health care professional that relates adversely to patient care or safety; or

ii. A body within the health care entity that has the authority to initiate an investigation that may lead to disciplinary action has expressed an intention, through any member of the medical or administrative staff, reflected in the records of the health care entity or expressed directly to the health care professional, to conduct such a review of the health care professional's patient care or conduct and the healthcare entity notifies the health care professional that the health care entity is conducting or intends to conduct the review or investigation.

5. The health care entity grants a leave of absence to the health care professional for reasons relating to a physical, mental or emotional condition or drug or alcohol use which impairs the health care professional's ability to practice with reasonable skill and safety while the health care professional is under, or subsequent to, a review by the health care entity of the health care professional's patient care or professional conduct, except that no report is required for pregnancy-related leaves of absence; or

6. The health care 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 arbitration award.

**\*(b) The initiation of an investigation under (a)3i or 4i above shall have been reflected contemporaneously in the records of the health care entity.\***

**\*[(b)]\* \*(c)\*** A health care entity is not obligated to file a report under (a)5 above if the health care professional is participating, or agrees to participate, in an intervention program approved by the Division or the relevant licensing board and agrees to follow, and then does follow the treatment regimen or monitoring required by the program.

1. The health care entity shall confirm with the intervention program that the health care professional has agreed to participate and is participating in the program and has agreed to follow and continues to follow the treatment regimen or monitoring required by the program.

2. The health care entity shall notify the health care professional that the health care entity would have filed a report

under (a)5 above but for the health care professional's participation in, and compliance with the treatment regimen or monitoring required by, an approved intervention program.

3. The health care entity shall file the report under (a)5 above within seven days after obtaining knowledge that the health care professional is not in compliance with the requirements of the program.

\*[(c)]\* **(d)** When a health care entity is required to notify the Clearing House Coordinator under (a)1, 2 or 5 above about a health care professional who has exhibited conduct relating adversely to patient care or safety, the action to be reported to the Clearing House Coordinator is action taken by the health care entity that limits, curtails or prevents a health care professional from performing the full scope of his or her duties or places conditions on that performance.

\*[(d)]\* **(e)** A health care entity shall file an additional report if the entity's due process review or the passage of time results in the health care entity taking other action that results in the full or partial restoration of the duties that had been limited, curtailed or prevented, or further limits, curtails or prevents a health care professional from performing the full scope of his or her duties.

\*[(e)]\* **(f)** A health care entity shall file a report with the Clearing House Coordinator pursuant to this section if the action taken by the health care entity is to require the health care professional to undergo remedial education or training.

\*[(f)]\* **(g)** A report required by this section shall be filed with the Clearing House Coordinator within seven calendar days of:

1. The date action under (a)1, 2 or 5 or \*[(d)]\* **(e)** above was taken by the health care entity;
2. The entry of a final order or judgment on an arbitration award; settlement by the parties in a litigated matter either by stipulation of the parties or the entry of a final order to dismiss; or entry of a final judgment or order on a motion under (a)6 above; or
3. The date the health care professional voluntarily resigns under the conditions provided in (a)3 above or voluntarily relinquishes any partial privilege or authorization to perform a specific procedure under the conditions provided in (a)4 above.

[page=653] 13:45E-3.2 Notification to the Clearing House Coordinator by a health care professional

(a) A health care professional shall file a report with the Clearing House Coordinator 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.

(b) The health care professional shall file the report required under (a) above if he or she has personal knowledge of the information required to be reported, unless the health care professional is only aware of that information as a result of participation in a review or other proceeding conducted by or for a health care entity.

(c) A health care professional, who would otherwise be required to file a report under (a) above, may discharge his or her duty by joining with the entity in filing a report with the Clearing House Coordinator, evidenced by his or her signature on the report or by receiving written assurance from the health care entity notified that it has fulfilled its reporting requirement.

(d) A health care professional who has signed a report to be filed jointly with the entity and received the acknowledgement and undertaking shall have satisfied his or her duty to file a report.

(e) A health care professional who signs a joint report shall retain a copy of the acknowledgement and undertaking for a period of seven years.

### 13:45E-3.3 Duty of health care entity to a health care professional subject to N.J.S.A. 45:1-37

(a) A health care entity shall execute and deliver to the health care professional signing the report an acknowledgment of such signing and an undertaking to file the joint report with the Clearing House Coordinator.

(b) A health care entity that is reporting the conduct of a health care professional on behalf of a health care professional who has reported the conduct to the health care entity as set forth in N.J.A.C. 13:45E-3.2(c), shall provide notice **\*and a copy of the filed report\*** to the reporting health care professional within seven calendar days that the health care entity has notified the Clearing House Coordinator.

## SUBCHAPTER 4. NOTIFICATION TO THE HEALTH CARE PROFESSIONAL BY THE HEALTH CARE ENTITY

### 13:45E-4.1 Notification to the health care professional by the health care entity

A health care entity shall provide the health care professional who is the subject of a report pursuant to N.J.A.C. 13:45E-3.1 with a copy of the report provided to the Clearing House Coordinator, when the health care entity submits the report to the Clearing House Coordinator.

## SUBCHAPTER 5. REPORT TO CLEARING HOUSE COORDINATOR

### 13:45E-5.1 Form of report; report not "government record"

(a) Reports to the Clearing House Coordinator shall be on the form annexed to this chapter as the Appendix and incorporated herein by reference.

(b) Reports to or from the Clearing House Coordinator shall not be considered government records under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

### 13:45E-5.2 Review of the report

(a) The Clearing House Coordinator, together with the Deputy Director and counsel, if needed, shall review each report to determine if the action and conduct reported are required to be the subject of a report under N.J.A.C. 13:45E-3.1.

(b) If the action or conduct reported is required to be reported under N.J.A.C. 13:45E-3.1, the Clearing House Coordinator shall notify the reporting entity or the reporting health care professional that the report has been accepted.

(c) If the action or conduct reported does not constitute action or conduct that must be reported under N.J.A.C. 13:45E-3.1, the Clearing House Coordinator shall notify the **\*health care professional named in the submission and the\*** reporting entity or the reporting health care professional that the action or conduct reported is not required to be reported, and that the filing entity or health care professional shall not consider its submission to the Clearing House Coordinator to be a report within the meaning of this chapter.

**\*[(d) An entity that is notified that its submission is not a report within the meaning of this chapter shall notify in writing the health care professional named in the submission that the submission does not constitute a report and that he or she has not been the subject of a report as the result of the submission.]\***

**\*[(e)]\* \*(d)\*** A submission rejected by the Clearing House Coordinator under this section shall not be disclosed to an inquiring health care entity under N.J.A.C. 13:45E-6.1

## SUBCHAPTER 6. DISCLOSURE OF INFORMATION TO A HEALTH CARE ENTITY

### 13:45E-6.1 Disclosure of information to an inquiring health care entity

(a) A health care entity making an inquiry to another health care entity about a health care professional shall furnish to that entity a written certification that the inquiry is made for the purpose of evaluating a health care professional for hiring, continued employment, or continued privileges.

(b) Upon receipt of the certification provided under (a) above, a health care entity shall disclose to the health care entity making the inquiry about a health care professional:

1. All reports it filed with the Clearing House Coordinator about that health care professional, including reports of restoration of privileges or the full or partial restoration of duties that had been limited, curtailed or prevented; and
2. Any information that the health care entity has at the time of the inquiry about the disposition of any matter that was the subject of a report regarding that health care professional.

(c) A health care entity that has submitted a report that has not been accepted or rejected shall advise the inquiring entity that it has submitted a report that is pending.

### 13:45E-6.2 Disclosure of information by Clearing House Coordinator

(a) A health care entity that makes an inquiry to the Clearing House Coordinator about a health care professional shall furnish to the Clearing House Coordinator a written certification that the inquiry is made for the purpose of evaluating a health care professional for hiring, continued employment, or continued privileges and written authorization from the health care professional to release information on the status of or final disposition of any matter that was the subject of a report regarding that health care professional.

(b) Upon receipt of the certification and authorization under (a) above, the Clearing House Coordinator shall give the inquiring health care entity information on the status of or final disposition of any matter that was the subject of a report regarding that health care professional.

## SUBCHAPTER 7. CONFIDENTIALITY

### 13:45E-7.1 Confidentiality

(a) The confidentiality afforded by the Act shall not apply to any mandatory information included in a health care professional's profile posted pursuant to N.J.S.A. 45:9-22.23.

(b) The Clearing House Coordinator shall notify a health care entity, or health care professional, that filed a report of the disposition of any investigation of a health care professional that was the subject of a report.

(c) In the case of a report that was filed jointly by a health care entity and a health care professional, the Clearing House Coordinator shall notify the health care entity of the disposition of any investigation of the health care professional who was the subject of a report. The health care entity shall make reasonable efforts to notify the health care professional who jointly filed the report of the disposition of any investigation of the health care professional who was the subject of the report.

[page=654] (d) The Clearing House Coordinator shall notify a health care professional who was the subject of a report of the disposition of any investigation of that health care professional.

## SUBCHAPTER 8. RECORDS

### 13:45E-8.1 Records

A health care entity or a health care professional required to create a document or writing under this subchapter shall

retain the document or writing for a period of seven years.

[page=655] **APPENDIX**



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