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NEW JERSEY ADMINISTRATIVE CODE  
TITLE 13  
LAW AND PUBLIC SAFETY  
CHAPTER 45C  
UNIFORM REGULATIONS

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# CHAPTER TABLE OF CONTENTS

<b>SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS .....</b>	<b>3</b>
13:45C-1.1 Applicability, scope and definitions.....	3
13:45C-1.2 Licensee’s duty to cooperate in investigative inquiries .....	3
13:45C-1.3 Specific conduct deemed failure to cooperate .....	3
13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct .....	4
13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings .....	4
13:45C-1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable .....	5
<b>SUBCHAPTER 2. WAIVERS FROM REGULATORY REQUIREMENTS; APPLICATION .....</b>	<b>6</b>
13:45C-2.1 Applicability; scope.....	6
13:45C-2.2 Definitions .....	6
13:45C-2.3 Application for waiver request by licensee or applicant.....	7
13:45C-2.4 Application for waiver request by regulated person.....	8
13:45C-2.5 Agency authority not limited.....	8
<b>SUBCHAPTER 3. PERFORMANCE-BASED OUTCOMES .....</b>	<b>8</b>
13:45C-3.1 Applicability; scope.....	8
13:45C-3.2 Definitions .....	9
13:45C-3.3 Resolving alleged violations without enforcement proceedings .....	9

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**SUBCHAPTER 1.  
LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD  
ORDERS**

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**13:45C-1.1 APPLICABILITY, SCOPE AND DEFINITIONS**

- a) This subchapter shall apply to all licensees of any board, committee or sub-unit within the Division of Consumer Affairs.
  
- b) For the purpose of this subchapter, "licensee" shall mean any licensee, permittee, certificate holder or registrant of:
  - 1) The Division of Consumer Affairs;
  
  - 2) Any professional or occupational licensing board, committee, or other subunit of a board or committee located within the Division; or
  
  - 3) The Legalized Games of Chance Control Commission.

**13:45C-1.2 LICENSEE'S DUTY TO COOPERATE IN INVESTIGATIVE INQUIRIES**

- a) A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee's licensing agency into a licensee's conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions.
  
- b) A licensee's failure to cooperate, absent good cause or bona fide claim of a privilege not identified in N.J.A.C. 13:45C-1.5 as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency's enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency's enabling act.

**13:45C-1.3 SPECIFIC CONDUCT DEEMED FAILURE TO COOPERATE**

- a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct and grounds for disciplinary action including, but not limited to, suspension or revocation of licensure:
  - 1) The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct;

- 2) The failure to timely provide records related to licensee conduct;
- 3) The failure to attend any scheduled proceeding at which the licensee's appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not cause an adjournment of the proceeding;
- 4) The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession;
- 5) The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a bona fide claim of privilege;
- 6) The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law; or
- 7) The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

#### **13:45C-1.4 FAILURE TO COMPLY WITH BOARD ORDERS AS PROFESSIONAL OR OCCUPATIONAL MISCONDUCT**

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

#### **13:45C-1.5 UNAVAILABILITY OF PRIVILEGES IN INVESTIGATIVE OR DISCIPLINARY PROCEEDINGS**

- a) In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage and family therapist-client privilege, professional counselor-client privilege, associate counselor-client

privilege, social worker-client privilege and the alcohol and drug counselor-client privilege shall be unavailable.

- b) Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate, licensing board or the Office of Administrative Law in a-contested case.

**13:45C-1.6 MAINTENANCE OF AND ACCESS TO STATEMENTS, RECORDS OR OTHER INFORMATION THAT IS SUBJECT TO A PRIVILEGE DECLARED UNAVAILABLE**

- a) Any statements, records or other information which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:
  - 1) The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;
  - 2) The professional or occupational licensing board and the committee or other subunit of a board or committee located within the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or
  - 3) A Deputy Attorney General.
- b) Except as may be otherwise ordered as provided in the subchapter, access to statements, records or other information shall be afforded only to employees and agents of, and experts or other consultants retained by, the Attorney General, the Enforcement Bureau, or the Board or other subunit of the Division having a direct connection with, or a need for access to, the matter to which the statement, records or other information pertain.
- c) The statements, records or other information may be retained for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they may be returned to the licensee or other person from whom they were obtained. In the absence of such licensee or other person, the statements, records or other information may be returned to the patient, where appropriate.

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## SUBCHAPTER 2. WAIVERS FROM REGULATORY REQUIREMENTS; APPLICATION

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### 13:45C-2.1 APPLICABILITY; SCOPE

- a) The rules in this subchapter shall apply to all licensees of the Division of Consumer Affairs, of any board, committee or unit within the Division of Consumer Affairs, and of the Legalized Games of Chance Control Commission; to all applicants for licensure by the Division, such boards, committees or units or the Commission; and to persons whose conduct is subject to, or regulated by, the laws and rules administered by the Division of Consumer Affairs, by any board, committee or unit within the Division of Consumer Affairs or by the Commission. For the purposes of this subchapter, units within the Division include, for example, the Bureau of Securities, the Charities Registration Unit and the Office of Weights and Measures.
- b) The purpose of the rules in this subchapter is to authorize boards, committees, and units within the Division, pursuant to the standards and according to the requirements enunciated in the rules, to waive a specific regulatory requirement in circumstances specified in the subchapter where the grant of a waiver will not compromise the spirit and intent of the agency's statutory goals of providing consumer protection or pose a risk to the health, safety, or welfare of the public. The rules of this subchapter do not grant authority to such boards, committees, and units to waive statutory requirements. A waiver under this subchapter shall not excuse a failure to obtain a license, permit, or other authorization required by ordinance, statute, or rule to be obtained from a unit within the Division or from another governmental agency.

### 13:45C-2.2 DEFINITIONS

For purposes of this subchapter, the following words shall have the following meaning, unless the context indicates otherwise:

“Agency” means:

1. The Division;
2. Any professional or occupational licensing board, committee or subunit of a board or committee located within the Division; or
3. The Commission.

“Applicant” means any person applying for a license, permit, certificate or registration issued by an agency.

“Commission” means the Legalized Games of Chance Control Commission.

“Division” means the Division of Consumer Affairs and all units within the Division of Consumer Affairs, including, without limitation the Bureau of Securities, the Charities Registration Unit and the Office of Weights and Measures.

“Licensee” means any licensee, permittee, certificate holder or registrant of an agency.

“Person” means any natural person, partnership, corporation, company, association or other business or non-profit entity.

“Regulated person” means a person, other than an applicant or licensee, whose commercial or not-for-profit activities are subject to, or regulated by, the laws and rules administered by an agency.

### **13:45C-2.3 APPLICATION FOR WAIVER REQUEST BY LICENSEE OR APPLICANT**

- a) A licensee or an applicant may apply to an agency for a waiver or relaxation of a specific regulatory requirement when strict compliance with that requirement would lead to an unfair, burdensome or incongruous result; would conflict with the rules of another agency; or would result in undue hardship, economic or otherwise, provided that the waiver or relaxation of the regulatory requirements would not unduly burden any affected parties, and that the waiver is consistent with the underlying purposes of the agency’s laws and rules.
- b) A licensee or an applicant shall submit a waiver request in writing which shall be timely and shall include the following:
  - 1) The specific rule(s) or part(s) of the rule(s) for which the waiver is requested;
  - 2) The reasons for requesting the waiver, including a statement detailing the hardship that would result to the licensee or applicant if the waiver is not approved; and
  - 3) Documentation that supports the licensee’s or applicant’s request for the waiver, if applicable.
- c) Absent a request for a waiver, an agency may waive or relax its regulatory requirements on its own initiative if the consequence of requiring strict compliance with the rules, or parts of the rules, in a particular instance, would lead to an unfair, burdensome or incongruous result, or would endanger the health, safety and welfare of the general public.

**13:45C-2.4 APPLICATION FOR WAIVER REQUEST BY REGULATED PERSON**

- a) A regulated person may apply to an agency for a waiver or relaxation of a specific regulatory requirement when strict compliance with that requirement would conflict with the rules of another agency, would be unduly burdensome or would result in undue hardship, economic or otherwise, provided that the waiver or relaxation of the regulatory requirements would not unduly burden any affected parties, and that the waiver is consistent with the underlying purposes of the agency's laws and regulations.
- b) A regulated person shall submit a waiver request in writing, which shall be timely and shall include the following:
  - 1) The specific rule(s) or part(s) of the rule(s) for which the waiver is requested;
  - 2) The reasons for requesting the waiver, including a statement detailing the hardship that would result to the regulated person if the waiver is not approved; and
  - 3) Documentation that supports the regulated person's request for the waiver, if applicable.
- c) Absent a request for a waiver, an agency may waive or relax its regulatory requirements on its own initiative if the consequence of strict compliance with the rules, or parts of the rules, in a particular instance, would lead to an unfair, burdensome or incongruous result, or would endanger the health, safety and welfare of the general public.

**13:45C-2.5 AGENCY AUTHORITY NOT LIMITED**

Nothing contained in this subchapter shall limit, diminish or abrogate the authority of an agency to take such action as is available to it under applicable law or agency rule.

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**SUBCHAPTER 3.  
PERFORMANCE-BASED OUTCOMES**

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**13:45C-3.1 APPLICABILITY; SCOPE**

The rules in this subchapter shall apply to alleged violations of the rules and regulations of the Division of Consumer Affairs, each board, committee and unit within the Division of Consumer Affairs and the Legalized Games of Chance Control Commission. For the purposes of this subchapter, units within the Division include, for example, the Bureau of Securities, the Charities Registration Unit and the Office of Weights and Measures.



**13:45C-3.2 DEFINITIONS**

For purposes of this subchapter, the following words shall have the following meaning, unless the context indicates otherwise:

“Agency” means:

1. The Division;
2. Any professional or occupational licensing board, committee or subunit of a board or committee located within the Division; or
3. The Legalized Games of Chance Control Commission.

“Charging document” means a document issued by an agency to commence an enforcement action including, but not limited to, an administrative complaint, provisional order of discipline, notice of violation or uniform penalty letter.

“Division” means the Division of Consumer Affairs and all units within the Division of Consumer Affairs, including, without limitation the Bureau of Securities, the Charities Registration Unit and the Office of Weights and Measures.

“Licensee” means any licensee, permittee, certificate holder or registrant of an agency.

“Person” means any natural person, partnership, corporation, company, association or other business or non-profit entity.

“Regulated person” means a person, other than an applicant or licensee, whose commercial or not-for-profit activities are subject to, or regulated by, the laws and rules administered by an agency.

**13:45C-3.3 RESOLVING ALLEGED VIOLATIONS WITHOUT ENFORCEMENT PROCEEDINGS**

- a) An agency that finds that there is a basis on which to file or issue a charging document to commence an enforcement proceeding against a person, at its discretion in appropriate circumstances and consistent with applicable law, may pursue measures to encourage the person to comply with the agency’s rules rather than impose discipline or penalties.

- b) In exercising its discretion, the agency may consider, by way of example and not limitation, the following:
- 1) Whether the person made a good faith effort to comply;
  - 2) The impact of the alleged violation on the quality of the product or service provided;
  - 3) The impact of the alleged violation on the consumer for whom the product or service was provided;
  - 4) The impact of the alleged violation on the public health, safety and welfare;
  - 5) Whether the alleged violation is a first time violation or the same or similar to violations previously committed by the person;
  - 6) Whether the alleged violation is isolated paperwork or procedural regulatory noncompliance; and/or
  - 7) The seriousness of the alleged violation.
- c) Examples of agency measures to encourage compliance shall include, but not be limited to:
- 1) Issuing a letter of admonition or other warning to the alleged violator, which, unless otherwise provided by law, shall not be public information;
  - 2) Suspending the obligation to pay fines or penalties subject to continuing compliance with agency rules;
  - 3) Obtaining the agreement of the alleged violator, as a condition for continued, reinstated or renewed licensure, to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions;
  - 4) Obtaining the agreement of the alleged violator, as a condition for continued, reinstated or renewed licensure, to submit to any medical or diagnostic testing and monitoring or psychological evaluation that may be required to evaluate whether continued practice may jeopardize the safety and welfare of the public;
  - 5) Obtaining the agreement of the alleged violator, as a condition for continued, reinstated or renewed licensure, to submit to an assessment of skills to determine whether the

licensee can continue to practice with reasonable skill and safety, and to take and successfully complete educational training determined by the agency to be necessary;

- 6) Obtaining the agreement of the alleged violator to undergo corrective training or instruction;
  - 7) Obtaining the agreement of the alleged violator to participate in consumer outreach programs conducted by the Division and to speak on topics selected by the Division; and
  - 8) Obtaining the agreement of the alleged violator to contribute to the consumer fraud education fund.
- d) Nothing contained in this subchapter shall limit, diminish or abrogate the authority of an agency in the event of a violation to take such action as is available to it under applicable law or agency rule.