

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

**Rules Implementing the Health Care Professional Responsibility and Reporting
Enhancement Act**

Adopted New Rules: N.J.A.C. 8:30

Proposed: April 18, 2016, at 48 N.J.R. 619(a).

Adopted: March 17, 2017, by Cathleen D. Bennett, Commissioner, Department of Health, in consultation with Elizabeth Connolly, Acting Commissioner, Department of Human Services, and with the approval of the Health Care Administration Board.

Filed: April 18, 2017, as R.2017 d.095, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-12.2a and 2b; and the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c. 83 (approved May 3, 2005) as amended, particularly at § 19b (N.J.S.A. 45:1-41).

Effective Date: May 15, 2017.

Expiration Date: May 15, 2024.

Summary of Public Comments and Agency Responses:

The Department received comments from the following:

1. Karen S. Ali, Esq., General Counsel, New Jersey Hospital Association, Princeton, NJ; and

2. Melinda Martinson, General Counsel, Medical Society of New Jersey,
Lawrenceville, NJ.

Quoted, summarized, and/or paraphrased below, are the comments and the Department's responses. The numbers in parentheses following the comments below correspond to the commenter numbers above.

1. COMMENT: A commenter "strongly supports the intent of the law and generally supports the proposed [new rules,] applauds the work of the Department of Health to develop [them,] and [appreciates] the opportunity to express ... support and recommendations to enhance [them]. (1)

RESPONSE: The Department acknowledges the commenter's support for the proposed new rules.

2. COMMENT: A commenter states "that its members are experiencing difficulty obtaining information regarding the disposition of matters referred to the Clearing House which impacts inquiries at issue in the proposed [new rules, and requests that] the Department ... work with [the commenter, its] members and the Clearing House Coordinator to foster more free-flowing information on disposition to requesting entities."

(1)

RESPONSE: The comment does not address the proposed new rules, and thus exceeds the scope of the proposed rulemaking. The comment addresses the operations of the Clearinghouse Coordinator in the Division of Consumer Affairs within the Department of Law and Public Safety (DLPS). The Department will share the

comment with the Clearinghouse Coordinator. Subject to the foregoing, the Department will make no change on adoption in response to the comment.

3. COMMENT: A commenter “[urges] the Department of Health, [the] Division of Consumer Affairs [of the DLPS], and the Clearinghouse Coordinator to work together on education and outreach to the healthcare professionals and entities that are covered by the law and proposed [new rules]. Entities may, in good faith, report differently if there is not a consistent interpretation of the underlying law. Physicians also need to understand the circumstances under which a report may be made and the impact that these reports will have on their futures.” (2)

RESPONSE: The comment does not address the proposed new rules, and thus exceeds the scope of the proposed rulemaking. Rules of the DLPS at N.J.A.C. 13:45E govern reporting to the Clearinghouse Coordinator. Upon information and belief, the Clearinghouse Coordinator has offered, and continues to offer, educational and outreach opportunities on the operation of the law and the Clearinghouse. In addition, the Clearinghouse Coordinator makes available an online contact form for submission of requests for speakers at <http://www.njconsumeraffairs.gov/hcpr>. The Department will share the comment with the Clearinghouse Coordinator. The Department suggests that the commenter communicate directly with the Clearinghouse Coordinator to inquire as to upcoming educational and outreach opportunities.

4. COMMENT: A commenter states “that proposed [new N.J.A.C.] 8:30-1.4(c), along with language present on the Health Care Facility Inquiry [Regarding Health Care

Professional] form [(form)], creates tension with [State] and [Federal] patient safety statutes, specifically the New Jersey Patient Safety Act, P.L. 2004, c.9 and the [Federal] Patient Safety and Quality Improvement Act of 2005, Pub. L. 109-41 [(hereinafter collectively referred to as the “Patient Safety Acts”).” The commenter states that proposed new N.J.A.C. 8:30-1.4(c), which “would require a facility that receives a validly executed inquiry form from a healthcare entity to return a completed form with any other information[,] should be clarified to specifically exclude documents or information collected by the responding healthcare entity pursuant to the [Patient Safety Acts]. Without this clarification and protection, the proposed [new rule] unintentionally [may] conflict with the explicit protections afforded to certain documents intended to be protected from disclosure under the [Patient Safety] Acts.” The commenter recommends that the Department change proposed new N.J.A.C. 8:30-1.4(c), which states that a “facility that receives a validly executed inquiry form from any health care entity shall complete and return the form and any other information required pursuant to N.J.S.A. 26H-12.2c and N.J.A.C. 13:45E-6.1 to the inquiring health care entity within eight business days of receipt of the inquiry form,” by adding the phrase, “except when the information is collected, created, or provided pursuant to” the Patient Safety Acts. The commenter requests that the Department make a corresponding change to the sentence at page two of the form that states, “Attach copies of reports and any supporting documentation submitted to these entities when returning this form to the inquiring facility,” to add the phrase, “except supporting documentation collected, created, or provided pursuant to” the Patient Safety Acts. (1)

RESPONSE: The Patient Safety Acts can be read to co-exist with the reporting and documentation requirements at proposed new N.J.A.C. 8:30. N.J.S.A. 26:2H-12.2b and N.J.A.C. 13:45E-6 specify the information that health care entities are to report, and the processes and forms that health care entities are to use in making those reports, to the Clearinghouse Coordinator. These standards are independent of the standards that the Patient Safety Acts establish with respect to the content of, and the processes and forms by which to make, required reports. The proposed new rules and form at N.J.A.C. 8:30 would require reporting health care entities to disclose to an inquiring facility, under specified circumstances, only the information and documents that they disclosed to the Clearinghouse Coordinator pursuant to N.J.S.A. 26:2H-12.2b and N.J.A.C. 13:45E-6. Therefore, the Department perceives no conflict between health care entities' reporting obligations under the Patient Safety Acts and their obligations under the proposed new rules at N.J.A.C. 8:30. Moreover, the concealment effect of the changes the commenter suggests could undermine the effectiveness of the proposed new rules in implementing the purposes of the Health Care Professional Responsibility and Reporting Enhancement Act, that is, to alert potential employers of a health care professional as to the existence of a record of the professional's prior service to other health care entities that is indicative of the professional's potential impairment.

For these reasons, the Department will make no change on adoption in response to the comment.

5. COMMENT: A commenter inquires, with respect to proposed new N.J.A.C. 8:30-1.4(a), “does the Department contemplate that the inquiring facility may utilize an outside entity to make inquiries (such as reference checks) to other healthcare facilities?” (1)

RESPONSE: The Department does not contemplate the delegation the commenter describes. The Health Care Professional Responsibility and Reporting Enhancement Act does not authorize health care entities to delegate their responsibilities to report to the Clearinghouse Coordinator or to make or respond to inquiries to health care entities. Therefore, the Department will make no change on adoption in response to the comment.

6. COMMENT: A commenter “[urges] reconsideration of the look-back period in proposed N.J.A.C. 8:30-1.5(b). The requirement is facially inconsistent with the seven[-] year records retention requirement for healthcare entities [at proposed new N.J.A.C. 8:30-1.5](a) [and finds] no statutory authority to require that records created prior to 1990 be provided to inquiring entities under the new law.” (2)

RESPONSE: Proposed new N.J.A.C. 8:30-1.5(b) requires health care entities to make available specified records that were created prior to January 12, 1990. N.J.A.C. 8:30-1.5(b) derives its authority from N.J.S.A. 26:2H-12.2a, which P.L. 1989, c. 300, § 3 (approved January 12, 1990) originally established and gave immediate effect.

As promulgated in 1990, P.L. 1989, c. 300, § 3, stated, in pertinent part: “The health care facility or health maintenance organization shall retain the information for a period of seven years and make the records, *including any information the health care*

facility or health maintenance organization has pertaining to records maintained on the practitioner prior to the effective date of P.L. 1989, c.300 ..., available to the State Board of Medical Examiners, the Medical Practitioner Review Panel ..., and the Department of Health, upon request” (emphasis added).

Thus, P.L. 1989, c. 300, § 3, required the specified entities to retain the records therein described that those entities held as of January 12, 1990, and to make them available upon request of the governmental bodies therein listed. The amendments that the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c. 83, at § 3 (approved May 3, 2005), and P.L. 2012, c. 17, § 178 (approved June 29, 2012), subsequently made to that sentence did not lessen that record retention obligation.

Thus, proposed new N.J.A.C. 8:30-1.5(b) is consistent with an existing obligation that has been in effect since 1990, pursuant to N.J.S.A. 26:2H-12.2a. Therefore, the Department will make no change on adoption in response to the comment.

7. COMMENT: With respect to proposed new N.J.A.C. 8:30-1.6, a commenter requests that “the Department provide specific contact information for healthcare entities to report failures to comply with” proposed new N.J.A.C. 8:30. (1)

RESPONSE: The procedure to file complaints against health care facilities that the Department licenses for noncompliance with proposed new N.J.A.C. 8:30 would be the same as for any other type of complaint against Department-licensed health care facilities, as established in the existing licensure rules, in Title 8 of the New Jersey Administrative Code, that are respectively applicable to each type of facility. In addition,

the Department maintains a webpage through which complainants can obtain information about how to submit complaints regarding Department-licensed health care facilities, at http://www.state.nj.us/health/healthfacilities/file_complaint.shtml. The toll-free complaint telephone number is (800) 792-9770, the telefacsimile numbers are (609) 943-4977 for long-term care facilities and (609) 943-3013 for hospitals and ambulatory care facilities, and the mailing address is Complaint Unit, Assessment and Survey Program within the Division of Health Facility Survey and Field Operations, NJ Department of Health, PO Box 367, Trenton, NJ 08625-0367.

8. COMMENT: A commenter states, “Section I of the ... form requires certification pursuant to N.J.A.C. 13:45E-6.1(a).” The commenter requests that “the Department provide an example of when a healthcare entity may make an inquiry for the purpose of evaluating a healthcare professional for ‘continued employment’.” (1)

RESPONSE: The plain language of the phrase, “inquiry for the purpose of evaluating a healthcare professional for ... continued employment,” is self-explanatory. An example would be an inquiry made by a health care entity to inform that entity’s determination of whether or not to continue to employ a health care professional. Subject to the foregoing, the Department will make no change on adoption in response to the comment.

9. COMMENT: A commenter requests that the Department reconsider “the requirement for an entity to provide performance evaluations to inquiring entities. This requirement is found in the ‘response’ section of the ... form. This requirement is overbroad in that a

performance evaluation may contain information that is unrelated to patient care or patient safety. The [Health Care Professional Responsibility and Reporting Enhancement] Act was passed to address conduct that was harmful to patients. See N.J.S.A. 26:2H-12.2b, which consistently refers to incompetency or professional misconduct that ‘relates adversely to patient care or safety’ and specifically exempts from reporting ‘personal conduct, such as tardiness, insubordination or other similar behavior that does not relate to patient care or safety.’ *Id.* at (a)(6). Performance evaluations would likely include such personal conduct and is not required to be reported by the Act. [The commenter requests] that the performance evaluation requirement be removed since the information that was sought by the Act should be included in other documents or revealed through other responses to the inquiry.” (2)

RESPONSE: The commenter is correct. The Department erroneously read the N.J.S.A. 26:2H-12.2b as requiring entities responding to an inquiry to provide *copies* of performance evaluations to inquiring facilities. In fact, the Health Care Professional Responsibility and Reporting Enhancement Act requires responding entities to provide *information* about “job performance as it relates to patient care” that is *based on* performance evaluations, if certain conditions were met relating to the process by which performance evaluations are conducted. Responding entities are not to provide copies of performance evaluations. Based on the foregoing, and for the reasons the commenter states, the Department will make a change on adoption to remove from the form the requirement that responding entities provide copies of performance evaluations to inquiring entities, and to reflect more accurately the circumstances under which

responding entities are authorized to describe a health care professional's job performance as it relates to patient care based on a performance evaluation.

10. COMMENT: A commenter recommends that the Department “[clarify] the reporting requirement related to voluntary resignation or voluntary relinquishment of privileges under the Act ... to include leaves of absence or relinquishment of privileges which are entirely unrelated to patient care. For example, the Act exempts pregnancy[-] related leaves of absence, but does not mention a leave of absence taken by male or female healthcare professionals to care for a sick child or parent. In addition, [a professional in obstetrics and gynecology] might decide to give up [obstetrics] privileges because of the high professional liability insurance premiums or interference with family life. Surely, a person leaving under these circumstances should not be subject to reporting. This would avoid over-reporting in circumstances where a professional decides to resign or relinquish certain privileges for reasons entirely unrelated to patient care. This raises the question of whether the mere ‘expression of an intention’ by any member of the medical or administrative staff to conduct a review will trigger a reporting obligation when a healthcare professional voluntarily resigns or relinquishes privileges entirely unrelated to patient care. This could include a situation where the healthcare professional has a personal conflict with a coworker or superior, or disagreement with policies unrelated to patient care and safety, voluntarily resigns only to find that the resignation is under a cloud, and reportable, because any member of the medical or administrative staff expressed an intention to conduct a review. [The commenter] urges that the reporting requirement not include voluntary resignation or relinquishment of

privileges that are entirely unrelated to patient care and safety. To prevent such over-reporting, [the commenter recommends] that reports only be made when the healthcare professional has been informed of a review and given an opportunity to respond. This is consistent with American Medical Association policy that was passed during the last annual meeting. Resolution 207 requires that physicians be given notice of any investigation so that they are aware that their voluntary resignation or relinquishment of privileges might trigger a reporting obligation to the National Practitioner Data Bank.”

(2)

RESPONSE: The commenter appears to be referring to existing N.J.A.C. 13:45E-3.1(a)3, 4, and 5, which require health care entities to report to the Clearinghouse Coordinator health care professionals (1) who, under specified circumstances, voluntarily resign from staff and/or voluntarily relinquish “any partial clinical privilege or authorization to perform a specific procedure”; and/or (2) to whom health care entities, for specified reasons, grant leaves of absence. N.J.A.C. 13:45E-3.1(a)3, 4, and 5 closely track N.J.S.A. 26:2H-12.2b in identifying the particular, and limited, circumstances under which a voluntary resignation, voluntary relinquishment of privileges, and/or grant of absence leave, would trigger the obligation to report to the Clearinghouse Coordinator.

The DLPS promulgated N.J.A.C. 13:45E in 2011, following an appropriate opportunity for public comment upon the proposal thereof, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Rules for Agency Rulemaking at N.J.A.C. 1:30. See 42 N.J.R. 2577(a); 43 N.J.R. 647(a). The commenter, thus, had the opportunity to, and, in fact, did, comment on that notice of

proposal. See commenter three in the list of commenters at 43 N.J.R. at 647(a).

Moreover, it appears that the DLPS addressed issues that were the same or similar to those that the comment above raises, in its responses to the comments on the 2010 notice of proposal that are numbered two and three. See 43 N.J.R. at 648.

Thus, the comment appears to exceed the scope of this rulemaking and was considered, in whole or in part, by DLPS. Nonetheless, the Department will refer the comment to DLPS for consultation and consideration in connection with the review, in preparation for readoption, of N.J.A.C. 13:45E, which is scheduled to expire on March 7, 2018.

Subject to the foregoing, the Department will make no change on adoption, in response to the comment.

Summary of Agency-Initiated Changes:

1. The Department is making a change on adoption at N.J.A.C. 8:30-1.2(a) to add a cross-reference to the definitions at N.J.A.C. 13:45E of the listed terms.

2. The Department is making a change on adoption at N.J.A.C. 8:30-1.2(b) to define the term, “employee,” which the form uses, to correspond to the types of health care professionals who are subject to reporting to the Clearinghouse Coordinator, by tracking text at N.J.S.A. 26:2H-12.2a at subsection a and 12:2b at subsection a. This would ensure that health care entities that respond to an inquiry understand the term, “employee,” to include a health care professional who “has an affiliation with the health care entity,” is “under contract to render professional services to, or has privileges granted by,” a health care entity, or provides health care professional “services pursuant

to an agreement with a health care services firm or staffing registry,” in addition to a health care professional who receives a paycheck directly from a health care facility. The change would ensure that health care facilities respond to inquiries about health care professionals who provided health care professional services through the health care entity, regardless of the retention or compensation arrangements through which the professional provided those services.

3. The Department is making a technical change on adoption at N.J.A.C. 8:30-1.5(b) to correct a spelling error and a grammatical error, and to more precisely track the text of N.J.S.A. 26:2H-12.2a.

4. The Department is making several changes to the form.

The Department is reformatting the font, layout, and ordering of fields in the form for legibility, and to make it susceptible to electronic completion using computer word processing prior to printing (upon retrieval from the Department’s forms page).

Throughout the form, the Department is deleting uses of the phrase, “receiving facility,” and adding instead references to the term, “responding facility,” to refer to a facility responding to an inquiry.

At Section I, the Department is adding a checkbox to the certification, so that inquiring facilities can indicate, if applicable, that the purpose of an inquiry is to evaluate a health care professional for “continuing privileges,” to correspond to the checkbox used to indicate the evaluation for “continuing employment.”

At Section II, the Department is adding a field at which facilities responding to an inquiry can indicate the period during which a health care professional held privileges, to correspond to the field in which they indicate a health care professional period of

employment. The Department is adding fields at which responding facilities can indicate that health care professionals' privileges continue and/or employment is ongoing. The Department is changing the part of the form at which health care entities are to state the reason for a health care professional's change in status to correct grammatical errors. The Department is changing the part of the form at which a health care entity is to indicate the status of a report to add checkboxes for use in indicating the status of a report, to indicate less ambiguously that a report could be in "pending," "accepted," or "rejected" status, pursuant to N.J.A.C. 13:45E-5.2, and to state that "rejected" reports and supporting documentation are not to be shared with an inquiring health care entity, inasmuch as they are not "reports" within the meaning of the law, pursuant to N.J.A.C. 13:45E-5.2(c) and (d). The Department is relocating the part of the form that inquires as to the process by which a performance evaluation was performed, because, as located on proposal, it improperly would have directed responding entities to not respond to inquiries as to which N.J.S.A. 26:12.2(b) does not precondition the obligation to respond on the existence of certain procedures in the conduct of performance evaluations upon which entities are to base a response. The Department is adding a checkbox for health care entities to indicate whether a health care professional is eligible for privileges reinstatement, if applicable, to correspond to the checkbox at which the entity is to indicate a health care professional's eligibility for reemployment.

5. The Department is changing the instructions for form completion, at section 1, to reorganize the statement of the purpose of the form, and at section 2, to add the

definition of the term, “employee,” to correspond to the change on adoption, described above, to N.J.A.C. 8:30-1.2(b).

Federal Standards Statement

There are no Federal standards applicable to the adopted new rules. Therefore, no Federal standards analysis is required.

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]*):

8:30-1.2 Definitions

(a) The following words and terms are defined in the Act at P.L. 2005, c. 83 at §§ 2 and/or 4 (N.J.S.A. 26:2H-12.2b and/or 45:1-28)*, **and/or in the rules at N.J.A.C.**

13:45E,* and are used in this chapter as defined in the Act ***and/or N.J.A.C. 13:45E***:

...

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

...

***“Employee” means a health care professional who:**

- 1. Is employed by a health care entity;**
- 2. Has an affiliation with a health care entity;**
- 3. Is under contract to render professional services to a health care entity;**
- 4. Has privileges granted by a health care entity; or**

5. Provides health care professional services to a health care entity pursuant to an agreement with a health care services firm or staffing registry.*

...

8:30-1.5 Maintenance of records of complaints and disciplinary actions

(a) (No change from proposal.)

(b) A health care entity shall make available to the Department, the Division, the board that licenses or otherwise authorizes the health care professional to practice, and the Medical Practitioner Review Panel, as applicable, upon request, records maintained and retained pursuant to (a) above, including ***[records]* *any information* the *[entity]* *health care entity*** has pertaining ***to records maintained on*** a health care professional created prior to January 12, 1990 (the effective date of the Professional Medical Conduct Reform Act of 1989, P.L. 1989, c. 300).

(c)-(d) (No change from proposal.)

HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL

SECTION I – INQUIRY (TO BE COMPLETED BY INQUIRING HEALTH CARE FACILITY)	
INQUIRING HEALTH CARE FACILITY	
Name of Inquiring Health Care Facility	Date of Inquiry
Address of Inquiring Health Care Facility	
Name and Title of Contact Person	Phone
Email Address	Fax Number
<p>Certification pursuant to N.J.A.C. 13:45E-6.1(a): I certify that the Health Care Facility has authorized me to make this inquiry, and that I am making it for the purpose of evaluating a health care professional for (<i>check all that apply</i>):</p> <p style="text-align: center;"> <input type="checkbox"/> Hiring <input type="checkbox"/> Granting Privileges <input type="checkbox"/> Continuing Employment <input type="checkbox"/> Continuing Privileges </p>	
Signature	Date
HEALTH CARE FACILITY TO RECEIVE THIS INQUIRY	
Name of Health Care Facility	
Address of Health Care Facility	
Name and Title of Contact Person (if known)	Phone
Email Address	Fax Number
HEALTH CARE PROFESSIONAL ABOUT WHOM INQUIRY IS BEING MADE	
Name of Health Care Professional	
Maiden Name/Other Name(s) Used	
Credential of Professional	Professional License/Certification Number
SECTION II – RESPONSE (TO BE COMPLETED BY HEALTH CARE FACILITY RESPONDING TO THIS INQUIRY)	
Date Inquiry Received	Date Response Sent
Name of Health Care Professional	
Title(s) of Positions Held by Health Care Professional	
Dates the Health Care Professional was Employed by Responding Facility From: _____ To: _____	Is the Health Care Professional's employment ongoing with the Health Care Facility responding to this request? <input type="checkbox"/> Yes <input type="checkbox"/> No
Dates the Health Care Professional held Privileges at Responding Facility From: _____ To: _____	Does the Health Care Professional continue to hold privileges with the Health Care Facility responding to this request? <input type="checkbox"/> Yes <input type="checkbox"/> No

**HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL
(Continued)**

SECTION II – RESPONSE (Continued)

If the health care professional no longer is employed by, and/or no longer holds privileges at, the responding health care facility, state the reason for the separation of the health care professional from employment and/or the cessation of the health care professional's privileges at the responding health care facility (*attach additional sheets if necessary*):

During the seven years preceding the date of this inquiry, have you submitted any report about this health care professional to (*check all that apply*):

- the Clearinghouse Coordinator within the Division pursuant to N.J.S.A. 26:2H-12.2b?
- the Medical Practitioner Review Panel pursuant to N.J.S.A. 26:2H-12.2a? and/or
- any Board? (*state Name of Board*): _____

If you submitted a report to any of the entities above, please indicate the status of the Report:

- Clearinghouse Coordinator:..... Accepted Rejected Pending
- Medical Practitioner Review Panel:..... Accepted Rejected Pending
- Board: Accepted Rejected Pending

If report is either "accepted" by or "pending" before any of the above, attach copies of reports and any supporting documentation submitted to these entities when returning this form to the inquiring facility.

If report was "rejected," do not attach copies.

Did the health care professional receive a written performance evaluation from the responding facility?

- Yes No (*If "No," proceed to Section III.*)

If "Yes,"

- a. was the evaluation signed by the evaluator? Yes No
- b. was the evaluation shared with the employee? Yes No
- c. did the health care professional have the opportunity to respond to the evaluation? Yes No

If the answer to any of the questions above is "No," proceed to Section III.

If the answers to all questions above are "Yes," then, taking into consideration the health care professional's response to the evaluation, if any, provide information about the health care professional's job performance as it relates to patient care. (*See instructions. Attach additional sheets if necessary.*)

Is the health care professional eligible for re-employment by the responding health care facility?

- Yes No

Is the health care professional eligible for reinstatement of privileges at the responding health care facility?

- Yes No

SECTION III - SIGNATURE

I certify that the foregoing statements made by me are truthful and made in good faith and without malice. I am aware that if any of the foregoing statements made by me are untruthful, made in bad faith, and/or with malice, I am subject to punishment and the responding health care facility is subject to penalties pursuant to N.J.S.A. 26:2H-12.2c and N.J.A.C. 8:30-1.6.

Name (<i>print</i>)	Title
Signature	Date

INSTRUCTIONS FOR COMPLETING THE HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL FORM

1. Purpose of form

The purpose of the Health Care Facility Inquiry Regarding Health Care Professional form is to implement the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c.83 (approved May 3, 2005) ("Act"), particularly § 15, codified at N.J.S.A. 26:2H-12.2c, and the implementing rules at N.J.A.C. 8:30 and N.J.A.C. 13:45E ("Rules").

When a word or term used in these instructions appears in **bold**, it refers to a term for which a definition is provided in Section 2 below, and/or in the Act or the Rules.

The Health Care Facility Inquiry Regarding Health Care Professional form is to be used by a health care **facility** (inquiring **facility**) licensed by the Department of Health to make an inquiry to another health care **facility** licensed by the Department (responding **facility**) about a **health care professional** who is currently or was formerly employed by, and/or who holds or formerly held privileges at the responding **facility** pursuant to the Act and the Rules. A **health care entity** other than a **facility** may elect to use this form to inquire of a **facility** or a **health care entity**. **Facilities** that receive an inquiry from any **health care entity** shall respond using this form.

2. Definitions

Following are definitions of words and terms used in the form as defined in the Act and/or the Rules.

- **"Board"** means a professional and occupational licensing board within the **Division** of Consumer Affairs in the Department of Law and Public Safety which licenses or otherwise authorizes a health care professional to practice a health care profession.
- **"Clearinghouse Coordinator"** means a "Health Care Professional Information Clearinghouse Coordinator" as N.J.S.A. 45:1-40 uses that term, and a "Clearing House Coordinator" as N.J.A.C. 13:45E defines that term.
- **"Division"** means the Division of Consumer Affairs in the Department of Law and Public Safety.
- **"Facility"** means a health care facility licensed pursuant to P.L.1971, c.136 (N.J.S.A. 26:2H-1 et seq.).
- **"Health care entity"** means a health care **facility** licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance organization authorized to operate pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), a carrier which offers a managed care plan regulated pursuant to P.L.1997, c.192 (C.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 (C.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[].
- **"Medical Practitioner Review Panel"** or **"review panel"** means the Medical Practitioner Review Panel established pursuant to N.J.S.A. 45:9-19.8.
- **"Report"** means the completed written notification form used by a **health care entity** or a **health care professional** to notify the **Clearinghouse Coordinator** of the types of reportable conduct set forth in the Act[.]

**INSTRUCTIONS FOR COMPLETING THE
HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL FORM
(Continued)**

3. Obligations of inquiring and receiving facilities pursuant to the Act:

A. N.J.A.C. 8:30-1.4 requires a **facility** that receives, from another **health care entity**, a duly executed Health Care Facility Inquiry Regarding Health Care Professional form to complete and return the form and any other documentation required pursuant to N.J.A.C. 13:45E-6.1 to the inquiring **health care entity** within eight business days of receipt of the form. A **facility** that fails to return the completed form and any other required documentation to the inquiring **health care entity** within eight business days of receipt of the form is subject to penalties pursuant to N.J.A.C. 8:30-1.6.

B. The Act at § 15 (N.J.S.A. 126:2H-12.2c) provides as follows:

26:2H-12.2c Disclosure of information by **health care entity**.

15. a. 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** pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b), or to the **review panel**, as required by section 3 of P.L.1989, c.300 (C.26:2H-12.2a), with respect to the **health care professional** about whom the inquiry has been made, providing a copy of the form of notification and any supporting documentation that was provided to the **division**, a professional or occupational licensing board in the Division of Consumer Affairs in the Department of Law and Public Safety, or the **review panel**; and

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

b. For the purposes of this section, "**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**.

Information about a current or former employee's **job performance** pursuant to this paragraph shall be

- based on the employee's performance evaluation, and
- 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.

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

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