

# Health Care Licensees Will Receive Greater Scrutiny

New statute aims to improve interfacility communication and enhance patient safety

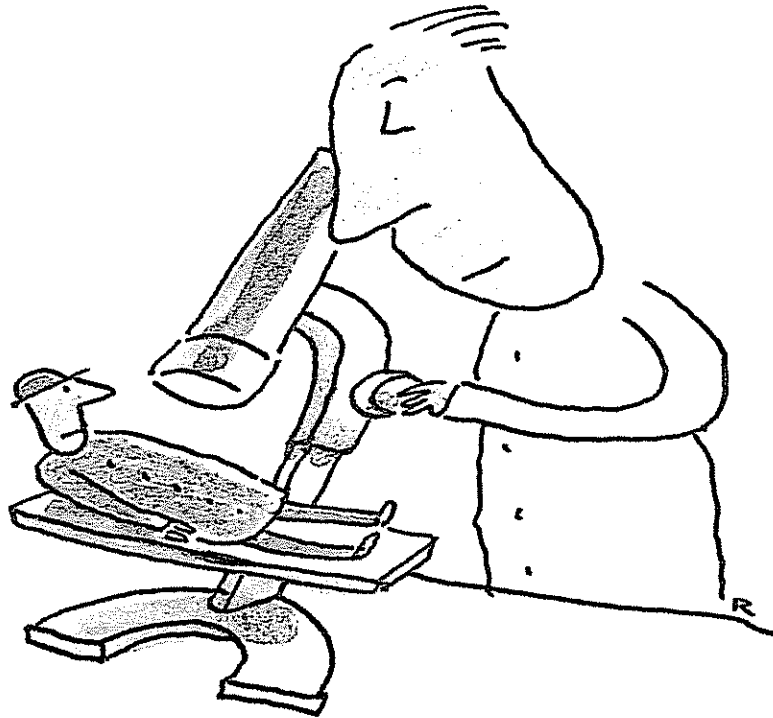
By Leonardo M. Tamburello

The Health Care Professional Responsibility and Reporting Enhancement Act became effective on October 30. It will affect every health care worker and entity in the State of New Jersey. It was enacted in response to confessions by Charles Cullen that while working in various medical facilities as a nurse, he murdered at least sixteen patients in New Jersey and one in Pennsylvania. During this 16-year career, Cullen was able to move from job to job with apparent ease even though co-workers often found his behavior suspicious. Negative information was not transmitted from past employers to prospective employers.

Portions of the act which apply to all health care licensees include: (1) new requirements that health care entities and practitioners report a wide range of interfacility administrative data, disciplinary information and medical malpractice detail to the state; (2) the creation of a system through which health care entities can check with former employers regarding reportable events involving a particular individual; (3) criminal history background checks, including fingerprinting, to be phased-in over four years.

While immediate compliance with the reporting provisions is mandatory and failure to notify the state of a reportable event can lead to civil penalties, the act provides

civil immunity to individuals who report information in good faith and act without malice. Furthermore, it explicitly states



that no private causes of action may be brought under the act, including the failure to report information under the act. N.J.S.A. 45:1-35. All information is to remain confidential pending the outcome of the investigation, except that it may be shared with the attorney general or other agencies as required. Any investigation which finds no basis for disciplinary action will also remain confidential. This provision does not apply to information which is required to be included in a physician's profile. N.J.S.A. 45:1-36.

The act also creates a full-time Health Care Professional Clearing House Coordinator within the Division of Consumer Affairs (DCA) to compile and disseminate information reported to the DCA to the proper licensing board or other entity. N.J.S.A.

45:1-40.

Other aspects of the act apply only to specific licensees. For physicians, podiatrists and optometrists, a new public database will be created containing specific information as to their qualifications, malpractice history, disciplinary records and other information. Once this data is collected and compiled, it will most

likely be made available through the state's Web site. With respect to physicians, the act also establishes a Review Panel, subordinate to the BME, to receive information, conduct investigations and make recommendations regarding specific matters.

### Peer Review and Reporting Requirements

The act's goal of increasing peer review and reporting of negligence and incompetence enlists all ranks of health care professionals and institutions as watchdogs including: doctors, nurses, physician's assistants, dentists, optometrists, pharmacists, chiropractors, acupuncturists, physical therapists, respiratory therapists,

*Tamburello is an associate with Kalison, McBride, Jackson & Murphy of Warren.*

Continued on page S-26

# Health Care Licensees Will Receive Greater Scrutiny

Continued from page S-5

psychologists, social workers, speech pathologists, ophthalmatic practitioners, marriage counselors, family therapists, occupational therapists, psychoanalysts, nurse's aides, personal care assistants and veterinarians. It also covers all licensed health care facilities, HMOs, managed care providers, state and county hospitals, developmental centers, staffing registries and home care service agencies. N.J.S.A. 26:2H-12.2b. State Senator Joseph Vitale (D-Middlesex), who sponsored the legislation, estimated that 120,000 New Jersey health care workers are affected.

The act requires entities to inform the DCA of any voluntary resignation, relinquishment, limitation or restriction of any clinical privileges because of an actual or intended investigation or impairment, incompetency, leave of absence, or professional misconduct related to patient care or safety. N.J.S.A. 26:2H-12.2b(a)(1) to (a)(5).

While some cases of error or incompetence which result in limitations on clinical privileges rightfully fall within the scope of this section, there are many instances where this reporting requirement may be triggered, albeit inadvertently. For example, it is not unusual for a department to migrate from an "open" to a closed-staff faculty model where one individual or group has an exclusive agreement to provide services to the hospital and hire physicians based on need. Such cases may create situations where physicians who had been on staff for years are interviewed and rejected by the new regime for a variety of reasons. If the current physician is not included on the closed staff for clinical reasons related to "competency," the end

of their privileges would be a reportable event under the act. Other circumstances may create situations where reported relinquishment or limitations of privileges would conflict with the concepts of fundamental fairness and due process embedded within a licensee's interest in their occupational training. See *In Re Limongelli*, 137 N.J. 317 (1993).

The act also continues a reporting requirement for when

**Health care entities are now required to maintain records relating to patient complaints and disciplinary proceedings for seven years.**

both the health care entity and practitioner are parties to a medical malpractice suit in which there is a settlement, judgment or arbitration award. Additionally, health care insurers must submit information relating to settlements, judgments or arbitration awards as well as terminations, denials or surcharges on medical malpractice liability insurance coverage. Exceptions exist for maternity leave and sabbaticals related to approved dependency-treatment programs. DCA must again be notified when full privileges are restored. N.J.S.A. 26:2H-12.2b.

All health care licensees now have an affirmative duty to report on each other if they come into

"possession of information which reasonably indicates" that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which presents an "imminent danger" to a particular patient or public health in general. N.J.S.A. 26:2H-12.2d. This does not apply where the knowledge is gained as a result of providing treatment. N.J.S.A. 45:1-37. In addition to reporting this information to the DCA, the licensee must also report this information to a designated person at the entity for which they work. N.J.S.A. 26:2H-12.2d.

Health care entities are now required to maintain records relating to patient complaints and disciplinary proceedings for seven years. In addition to this, records and source data relating to mortality, morbidity, complication, infection and readmission must be kept for four years. Failure to keep these records will result in civil penalties. N.J.S.A. 26:2h-12.2a.

Health care entities may inquire of each other and ask for: (1) whether, within the past seven years, an entity provided any notice to the DCA, Review Panel or licensing board about a particular employee; or (2) information relating to a current or former employee's "job performance" as memorialized in written evaluations if they are signed by the evaluator and shared with the employee. If there have been any reports made to state agencies, the reporting entity must provide a copy of the report and any supporting documentation which was submitted to the state. N.J.S.A. 26:2H-12.2c.

Beginning in November 2005, and to be completed in no more than four years, criminal history background checks, including fingerprints, will be conducted on all licensed health care professionals and cost each licensee \$78.00. N.J.S.A. 45:1-28 to 31. Because regulations governing the dissemination of criminal history record information prohibits the sharing of material for any reason other than the authorized and intended

purpose for which it was gathered, practitioners who have already been the subject of a background check and/or fingerprinting as part of licensing or for another state agency will have to undergo the process again.

### Public Profile

A Health Care Provider Public Profile must be established for physicians, podiatrists and optometrists. Profiles shall include: (1) names of all medical schools attended and dates of graduation; (2) all graduate medical education, including all internships, residencies and fellowships; (3) year first licensed; (4) year first licensed in New Jersey; (5) office locations; (6) description of any criminal convictions for, or guilty pleas to, crimes of the first, second, third or fourth degree within the last 10 years, excluding any crime which has been expunged; (7) a description of any final board disciplinary action in New Jersey or elsewhere, within the last 10 years, with any pending appeals noted; (8) all medical malpractice judgments and arbitration awards (but not pending cases) where a payment has been awarded to the complainant within the last five years, with pending appeals noted. The number of settlements, awards or judgments against a practitioner under this section shall be grouped into average, above average and below average, based on a comparison to settlements, awards or judgments of other practitioners in the same specialty. In addition to the individual practitioner, insurance companies are required to contribute data and information to this effort. N.J.S.A. 45:9-22.23(a) to -22.23(c).

At the request of any physician, podiatrist or optometrist, additional information will be included in their profile, such as: facilities where they have staff privileges; faculty appointments; board certifications; non-English services; insurance and Medicaid participation, and hours of practice and their office's accessibility to

disabled persons.

Practitioners will receive copies of their profile before it is made public, and have 30 days to correct any factual inaccuracies. N.J.S.A. 45:9-22.23.

### Health Care Review Panel

The act creates a required panel subordinate to the BME to receive information and "promptly investigate." Thereafter, the panel has a spectrum of possible resolutions available to it depending on the facts and circumstances. For the most serious cases presenting "imminent danger," the panel can sound the alarm to the BME and attorney general who would then take over the investigation.

For less emergent matters, the board must prepare a report recommending one of the following to the BME: (1) that the matter be turned over to the attorney gener-

al; (2) that the matter be deferred pending the outcome of litigation or a disciplinary proceeding; (3) that the practitioner enroll in an appropriate treatment or focused education program; or (4) that no further action be taken. The BME may accept, reject or modify the Review Panel's conclusions, and only after doing so, must it inform the licensee of the investigation. N.J.S.A. 45:9-19(c) to 19.9(f).

The Health Care Professional Responsibility and Reporting Enhancement Act goes beyond addressing vulnerabilities unique to the health care profession revealed by the Cullen case. By providing tools with which employers, the public in general, and patients in particular can educate themselves, it increases transparency and attempts to restore confidence in both health care institutions and individual care givers throughout the state. ■

- to add online access (\$35 per year)
- print edition only (\$219)
- print edition plus online access (\$254)

Call 973.854.2937  
Online: njlj.com