

# SENATE, No. 3521

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 4, 2019

**Sponsored by:**

**Senator ROBERT W. SINGER**

**District 30 (Monmouth and Ocean)**

**Senator JAMES W. HOLZAPFEL**

**District 10 (Ocean)**

**Co-Sponsored by:**

**Senator A.R.Bucco**

**SYNOPSIS**

Requires certain health care practitioners to disclose criminal and disciplinary history to patients.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/15/2019)**

1 AN ACT concerning health care disclosures and supplementing Title  
2 45 of the Revised Statutes.

3

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

6

7 1. a. Except as provided in subsection d. of this section, each  
8 podiatrist licensed by the State Board of Medical Examiners  
9 pursuant to R.S.45:5-1 et seq. shall provide a written disclosure to  
10 each patient, or to the patient's health care representative or, in the  
11 case of a patient who is an unemancipated minor, to the patient's  
12 parent or guardian, concerning:

13 (1) any crimes of the first, second, third, or fourth degree for  
14 which the podiatrist has been convicted, when the crime directly  
15 involved harm to a patient. For the purposes of this paragraph, a  
16 person shall be deemed to be convicted of a crime if the individual  
17 pleaded guilty or was found or adjudged guilty by a court of  
18 competent jurisdiction. The disclosure shall not include any  
19 convictions that have been expunged;

20 (2) any final disciplinary actions entered against the podiatrist  
21 by the board involving drug or alcohol abuse directly involving  
22 harm to a patient or that resulted in impairment such that the  
23 podiatrist was found to be unable to engage in the safe practice of  
24 podiatric medicine;

25 (3) any final disciplinary actions entered against the podiatrist  
26 by the board involving any act of sexual abuse, misconduct, or  
27 relations with a patient; and

28 (4) any final disciplinary actions entered against the podiatrist  
29 by the board involving inappropriate prescribing that resulted in  
30 harm to a patient.

31 b. A podiatrist shall provide the written disclosure required  
32 pursuant to subsection a. of this section prior to a patient's first visit  
33 with the podiatrist following entry of a criminal conviction or final  
34 disciplinary action for which disclosure is required pursuant to  
35 subsection a. of this section. The written disclosure shall include:

36 (1) a description of the offense;

37 (2) the date of the offense;

38 (3) a description of the penalties imposed for the offense;

39 (4) whether the conviction or final disciplinary action is under  
40 appeal;

41 (5) whether the podiatrist is on probation or is subject to  
42 practice restrictions, and the nature of any such restrictions;

43 (6) information concerning how the patient can access the  
44 podiatrist's profile maintained pursuant to P.L.2003, c.96 (C.45:9-  
45 22.21 et seq.); and

46 (7) any other information as may be required by the board or by  
47 the Division of Consumer Affairs in the Department of Law and  
48 Public Safety.

1 c. A podiatrist who is required to provide a written disclosure  
2 to a patient pursuant to this section shall, prior to providing care,  
3 treatment, or services to the patient, be required to obtain from the  
4 patient, or from the patient's health care representative or, in the  
5 case of a patient who is an unemancipated minor, the patient's  
6 parent or guardian, a signed attestation that the patient,  
7 representative, parent, or guardian, as applicable, has received, and  
8 has had the opportunity to review, the written disclosure, and that  
9 the patient, representative, parent, or guardian consents to the  
10 patient receiving care, treatment, and services. The consent  
11 provided pursuant to this subsection shall constitute a general  
12 consent to be seen by the podiatrist, and shall not be deemed to  
13 constitute consent to any given service or procedure.

14 d. A podiatrist who would otherwise be required to provide a  
15 written disclosure pursuant to this section shall not be required to  
16 provide the disclosure if:

17 (1) the patient requires acute treatment, care, or services but is  
18 unconscious, unresponsive, or lacks the capacity to provide consent  
19 pursuant to subsection c. of this section, and no health care  
20 representative is available to provide consent on the patient's  
21 behalf;

22 (2) the patient presents at an emergency department or urgent  
23 care facility or the visit is unscheduled, including consultations in  
24 an inpatient facility; or

25 (3) the podiatrist does not provide direct care, treatment, or  
26 services to the patient.

27 e. A podiatrist who violates the provisions of this section shall  
28 be liable to a civil penalty of up to \$1,000 for a first violation, and a  
29 civil penalty of up to \$2,500 for a second or subsequent violation.  
30 The civil penalty may be sued for and collected by the board in a  
31 summary proceeding pursuant to the "Penalty Enforcement Law of  
32 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

33

34 2. a. Except as provided in subsection d. of this section, each  
35 dentist licensed to practice by the New Jersey State Board of  
36 Dentistry pursuant to R.S.45:6-1 et seq. shall provide a written  
37 disclosure to each patient, or to the patient's health care  
38 representative or, in the case of a patient who is an unemancipated  
39 minor, to the patient's parent or guardian, concerning:

40 (1) any crimes of the first, second, third, or fourth degree for  
41 which the dentist has been convicted, when the crime directly  
42 involved harm to a patient. For the purposes of this paragraph, a  
43 person shall be deemed to be convicted of a crime if the individual  
44 pleaded guilty or was found or adjudged guilty by a court of  
45 competent jurisdiction. The disclosure shall not include any  
46 convictions that have been expunged;

47 (2) any final disciplinary actions entered against the dentist by  
48 the board involving drug or alcohol abuse directly involving harm

1 to a patient or that resulted in impairment such that the dentist was  
2 found to be unable to engage in the safe practice of dentistry;

3 (3) any final disciplinary actions entered against the dentist by  
4 the board involving any act of sexual abuse, misconduct, or  
5 relations with a patient; and

6 (4) any final disciplinary actions entered against the dentist by  
7 the board involving inappropriate prescribing that resulted in harm  
8 to a patient.

9 b. A dentist shall provide the written disclosure required  
10 pursuant to subsection a. of this section prior to a patient's first visit  
11 with the dentist following entry of a criminal conviction or final  
12 disciplinary action for which disclosure is required pursuant to  
13 subsection a. of this section. The written disclosure shall include:

14 (1) a description of the offense;

15 (2) the date of the offense;

16 (3) a description of the penalties imposed for the offense;

17 (4) whether the conviction or final disciplinary action is under  
18 appeal;

19 (5) whether the dentist is on probation or is subject to practice  
20 restrictions, and the nature of any such restrictions; and

21 (6) any other information as may be required by the board or by  
22 the Division of Consumer Affairs in the Department of Law and  
23 Public Safety.

24 c. A dentist who is required to provide a written disclosure to a  
25 patient pursuant to this section shall, prior to providing care,  
26 treatment, or services to the patient, be required to obtain from the  
27 patient, or from the patient's health care representative or, in the  
28 case of a patient who is an unemancipated minor, the patient's  
29 parent or guardian, a signed attestation that the patient,  
30 representative, parent, or guardian, as applicable, has received, and  
31 has had the opportunity to review, the written disclosure, and that  
32 the patient, representative, parent, or guardian consents to the  
33 patient receiving care, treatment, and services. The consent  
34 provided pursuant to this subsection shall constitute a general  
35 consent to be seen by the dentist, and shall not be deemed to  
36 constitute consent to any given service or procedure.

37 d. A dentist who would otherwise be required to provide a  
38 written disclosure pursuant to this section shall not be required to  
39 provide the disclosure if:

40 (1) the patient requires acute treatment, care, or services but is  
41 unconscious, unresponsive, or lacks the capacity to provide consent  
42 pursuant to subsection c. of this section, and no health care  
43 representative is available to provide consent on the patient's  
44 behalf;

45 (2) the patient presents at an emergency department or urgent  
46 care facility or the visit is unscheduled, including consultations in  
47 an inpatient facility; or

1 (3) the dentist does not provide direct care, treatment, or  
2 services to the patient.

3 e. A dentist who violates the provisions of this section shall be  
4 liable to a civil penalty of up to \$1,000 for a first violation, and a  
5 civil penalty of up to \$2,500 for a second or subsequent violation.  
6 The civil penalty may be sued for and collected by the board in a  
7 summary proceeding pursuant to the "Penalty Enforcement Law of  
8 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
9

10 3. a. Except as provided in subsection d. of this section, each  
11 physician licensed by the State Board of Medical Examiners  
12 pursuant to R.S.45:9-1 et seq. shall provide a written disclosure to  
13 each patient, or to the patient's health care representative or, in the  
14 case of a patient who is an unemancipated minor, to the patient's  
15 parent or guardian, concerning:

16 (1) any crimes of the first, second, third, or fourth degree for  
17 which the physician has been convicted, when the crime directly  
18 involved harm to a patient. For the purposes of this paragraph, a  
19 person shall be deemed to be convicted of a crime if the individual  
20 pleaded guilty or was found or adjudged guilty by a court of  
21 competent jurisdiction. The disclosure shall not include any  
22 convictions that have been expunged;

23 (2) any final disciplinary actions entered against the physician  
24 by the board involving drug or alcohol abuse directly involving  
25 harm to a patient or that resulted in impairment such that the  
26 physician was found to be unable to engage in the safe practice of  
27 medicine;

28 (3) any final disciplinary actions entered against the physician  
29 by the board involving any act of sexual abuse, misconduct, or  
30 relations with a patient; and

31 (4) any final disciplinary actions entered against the physician  
32 by the board involving inappropriate prescribing that resulted in  
33 harm to a patient.

34 b. A physician shall provide the written disclosure required  
35 pursuant to subsection a. of this section prior to a patient's first visit  
36 with the physician following entry of a criminal conviction or final  
37 disciplinary action for which disclosure is required pursuant to  
38 subsection a. of this section. The written disclosure shall include:

39 (1) a description of the offense;

40 (2) the date of the offense;

41 (3) a description of the penalties imposed for the offense;

42 (4) whether the conviction or final disciplinary action is under  
43 appeal;

44 (5) whether the physician is on probation or is subject to  
45 practice restrictions, and the nature of any such restrictions;

46 (6) information concerning how the patient can access the  
47 physician's profile maintained pursuant to P.L.2003, c.96 (C.45:9-  
48 22.21 et seq.); and

1 (7) any other information as may be required by the board or by  
2 the Division of Consumer Affairs in the Department of Law and  
3 Public Safety.

4 c. A physician who is required to provide a written disclosure  
5 to a patient pursuant to this section shall, prior to providing care,  
6 treatment, or services to the patient, be required to obtain from the  
7 patient, or from the patient's health care representative or, in the  
8 case of a patient who is an unemancipated minor, the patient's  
9 parent or guardian, a signed attestation that the patient,  
10 representative, parent, or guardian, as applicable, has received, and  
11 has had the opportunity to review, the written disclosure, and that  
12 the patient, representative, parent, or guardian consents to the  
13 patient receiving care, treatment, and services. The consent  
14 provided pursuant to this subsection shall constitute a general  
15 consent to be seen by the physician, and shall not be deemed to  
16 constitute consent to any given service or procedure.

17 d. A physician who would otherwise be required to provide a  
18 written disclosure pursuant to this section shall not be required to  
19 provide the disclosure if:

20 (1) the patient requires acute treatment, care, or services but is  
21 unconscious, unresponsive, or lacks the capacity to provide consent  
22 pursuant to subsection c. of this section, and no health care  
23 representative is available to provide consent on the patient's  
24 behalf;

25 (2) the patient presents at an emergency department or urgent  
26 care facility or the visit is unscheduled, including consultations in  
27 an inpatient facility; or

28 (3) the physician does not provide direct care, treatment, or  
29 services to the patient.

30 e. A physician who violates the provisions of this section shall  
31 be liable to a civil penalty of up to \$1,000 for a first violation, and a  
32 civil penalty of up to \$2,500 for a second or subsequent violation.  
33 The civil penalty may be sued for and collected by the board in a  
34 summary proceeding pursuant to the "Penalty Enforcement Law of  
35 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

36

37 4. a. Except as provided in subsection d. of this section, each  
38 chiropractor licensed by the State Board of Chiropractic Examiners  
39 pursuant to P.L.1989, c.53 (C.45:9-41.17 et seq.) shall provide a  
40 written disclosure to each patient, or to the patient's health care  
41 representative or, in the case of a patient who is an unemancipated  
42 minor, to the patient's parent or guardian, concerning:

43 (1) any crimes of the first, second, third, or fourth degree for  
44 which the chiropractor has been convicted, when the crime directly  
45 involved harm to a patient. For the purposes of this paragraph, a  
46 person shall be deemed to be convicted of a crime if the individual  
47 pleaded guilty or was found or adjudged guilty by a court of

1 competent jurisdiction. The disclosure shall not include any  
2 convictions that have been expunged;

3 (2) any final disciplinary actions entered against the  
4 chiropractor by the board involving drug or alcohol abuse directly  
5 involving harm to a patient or that resulted in impairment such that  
6 the chiropractor was found to be unable to engage in the safe  
7 practice of chiropractic; and

8 (3) any final disciplinary actions entered against the  
9 chiropractor by the board involving any act of sexual abuse,  
10 misconduct, or relations with a patient.

11 b. A chiropractor shall provide the written disclosure required  
12 pursuant to subsection a. of this section prior to a patient's first visit  
13 with the chiropractor following entry of a criminal conviction or  
14 final disciplinary action for which disclosure is required pursuant to  
15 subsection a. of this section. The written disclosure shall include:

16 (1) a description of the offense;

17 (2) the date of the offense;

18 (3) a description of the penalties imposed for the offense;

19 (4) whether the conviction or final disciplinary action is under  
20 appeal;

21 (5) whether the chiropractor is on probation or is subject to  
22 practice restrictions, and the nature of any such restrictions; and

23 (6) any other information as may be required by the board or by  
24 the Division of Consumer Affairs in the Department of Law and  
25 Public Safety.

26 c. A chiropractor who is required to provide a written  
27 disclosure to a patient pursuant to this section shall, prior to  
28 providing care, treatment, or services to the patient, be required to  
29 obtain from the patient, or from the patient's health care  
30 representative or, in the case of a patient who is an unemancipated  
31 minor, the patient's parent or guardian, a signed attestation that the  
32 patient, representative, parent, or guardian, as applicable, has  
33 received, and has had the opportunity to review, the written  
34 disclosure, and that the patient, representative, parent, or guardian  
35 consents to the patient receiving care, treatment, and services. The  
36 consent provided pursuant to this subsection shall constitute a  
37 general consent to be seen by the chiropractor, and shall not be  
38 deemed to constitute consent to any given service or procedure.

39 d. A chiropractor who would otherwise be required to provide  
40 a written disclosure pursuant to this section shall not be required to  
41 provide the disclosure if the chiropractor does not provide direct  
42 care, treatment, or services to the patient.

43 e. A chiropractor who violates the provisions of this section  
44 shall be liable to a civil penalty of up to \$1,000 for a first violation,  
45 and a civil penalty of up to \$2,500 for a second or subsequent  
46 violation. The civil penalty may be sued for and collected by the  
47 board in a summary proceeding pursuant to the "Penalty  
48 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

1           5. a. Except as provided in subsection d. of this section, each  
2 optometrist licensed by the New Jersey State Board of Optometrists  
3 pursuant to R.S.45:12-1 et seq. shall provide a written disclosure to  
4 each patient, or to the patient's health care representative or, in the  
5 case of a patient who is an unemancipated minor, to the patient's  
6 parent or guardian, concerning:

7           (1) any crimes of the first, second, third or fourth degree for  
8 which the optometrist has been convicted, when the crime directly  
9 involved harm to a patient. For the purposes of this paragraph, a  
10 person shall be deemed to be convicted of a crime if the individual  
11 pleaded guilty or was found or adjudged guilty by a court of  
12 competent jurisdiction. The disclosure shall not include any  
13 convictions that have been expunged;

14           (2) any final disciplinary actions entered against the optometrist  
15 by the board involving drug or alcohol abuse directly involving  
16 harm to a patient or that resulted in impairment such that the  
17 optometrist was found to be unable to engage in the safe practice of  
18 optometry;

19           (3) any final disciplinary actions entered against the optometrist  
20 by the board involving any act of sexual abuse, misconduct, or  
21 relations with a patient; and

22           (4) any final disciplinary actions entered against the optometrist  
23 by the board involving inappropriate prescribing that resulted in  
24 harm to a patient.

25           b. An optometrist shall provide the written disclosure required  
26 pursuant to subsection a. of this section prior to a patient's first visit  
27 with the optometrist following entry of a criminal conviction or  
28 final disciplinary action for which disclosure is required pursuant to  
29 subsection a. of this section. The written disclosure shall include:

30           (1) a description of the offense;

31           (2) the date of the offense;

32           (3) a description of the penalties imposed for the offense;

33           (4) whether the conviction or final disciplinary action is under  
34 appeal;

35           (5) whether the optometrist is on probation or is subject to  
36 practice restrictions, and the nature of any such restrictions;

37           (6) information concerning how the patient can access the  
38 optometrist's profile maintained pursuant to P.L.2003, c.96 (C.45:9-  
39 22.21 et seq.); and

40           (7) any other information as may be required by the board or by  
41 the Division of Consumer Affairs in the Department of Law and  
42 Public Safety.

43           c. An optometrist who is required to provide a written  
44 disclosure to a patient pursuant to this section shall, prior to  
45 providing care, treatment, or services to the patient, be required to  
46 obtain from the patient, or from the patient's health care  
47 representative or, in the case of a patient who is an unemancipated  
48 minor, the patient's parent or guardian, a signed attestation that the



1 patient, representative, parent, or guardian, as applicable, has  
2 received, and has had the opportunity to review, the written  
3 disclosure, and that the patient, representative, parent, or guardian  
4 consents to the patient receiving care, treatment, and services. The  
5 consent provided pursuant to this subsection shall constitute a  
6 general consent to be seen by the optometrist, and shall not be  
7 deemed to constitute consent to any given service or procedure.

8 d. An optometrist who would otherwise be required to provide  
9 a written disclosure pursuant to this section shall not be required to  
10 provide the disclosure if:

11 (1) the patient requires acute treatment, care, or services but is  
12 unconscious, unresponsive, or lacks the capacity to provide consent  
13 pursuant to subsection c. of this section, and no health care  
14 representative is available to provide consent on the patient's  
15 behalf;

16 (2) the patient presents at an emergency department or urgent  
17 care facility or the visit is unscheduled, including consultations in  
18 an inpatient facility; or

19 (3) the optometrist does not provide direct care, treatment, or  
20 services to the patient.

21 e. An optometrist who violates the provisions of this section  
22 shall be liable to a civil penalty of up to \$1,000 for a first violation,  
23 and a civil penalty of up to \$2,500 for a second or subsequent  
24 violation. The civil penalty may be sued for and collected by the  
25 board in a summary proceeding pursuant to the "Penalty  
26 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
27

28 6. The Director of the Division of Consumer Affairs in the  
29 Department of Law and Public Safety, the State Board of Medical  
30 Examiners, the New Jersey State Board of Dentistry, the State  
31 Board of Chiropractic Examiners, and the New Jersey State Board  
32 of Optometrists shall adopt rules and regulations, pursuant to the  
33 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
34 seq.), as may be necessary to implement the provisions of this act.  
35

36 7. This act shall take effect 180 days after the date of  
37 enactment.  
38  
39

40 STATEMENT  
41

42 This bill requires physicians, dentists, podiatrists, optometrists,  
43 and chiropractors to disclose to patients information concerning  
44 certain criminal convictions and final disciplinary actions prior to  
45 providing care, treatment, or services to the patient.

46 Specifically, practitioners will be required to provide patients, or  
47 their health care representatives, parents, or guardians, if  
48 appropriate, with a written disclosure concerning:

- 1       • any crimes of the first, second, third, or fourth degree for  
2       which the practitioner was convicted, when the crime  
3       directly involved harm to a patient;
- 4       • any final disciplinary actions entered against the practitioner  
5       involving drug or alcohol abuse directly involving harm to a  
6       patient or that resulted in impairment such that the  
7       practitioner was found to be unable to safely engage in  
8       professional practice;
- 9       • any final disciplinary actions entered against the practitioner  
10      involving any act of sexual abuse, misconduct, or relations  
11      with a patient; and
- 12      • any final disciplinary actions entered against the practitioner  
13      involving inappropriate prescribing resulting in harm to a  
14      patient.

15       Practitioners will be required to provide the written disclosure  
16      prior to a patient's first visit with practitioner following entry of a  
17      criminal conviction or final disciplinary action for which disclosure  
18      is required. The written disclosure is to include: a description of the  
19      offense; the date of the offense; a description of the penalties  
20      imposed for the offense; whether the conviction or final disciplinary  
21      action is under appeal; whether the practitioner is on probation or is  
22      subject to practice restrictions, and the nature of any such  
23      restrictions; in the case of physicians, podiatrists, and optometrists,  
24      information concerning how the patient can access the practitioner's  
25      profile maintained pursuant to P.L.2003, c.96 (C.45:9-  
26      22.21 et seq.); and any other information as may be required by the  
27      applicable licensing board or by the Division of Consumer Affairs  
28      in the Department of Law and Public Safety.

29       The practitioner will be required to obtain from the patient, or  
30      from the patient's health care representative or, in the case of a  
31      patient who is an unemancipated minor, the patient's parent or  
32      guardian, a signed attestation that the patient, representative, parent,  
33      or guardian, as applicable, has received, and has had the  
34      opportunity to review, the written disclosure, and that the patient,  
35      representative, parent, or guardian consents to the patient receiving  
36      care, treatment, and services. This consent will constitute a general  
37      consent to be seen by the practitioner, and will not constitute  
38      consent to any given service or procedure.

39       Practitioners otherwise required to provide a written disclosure  
40      under the bill will not be required to provide the disclosure in  
41      situations in which: the patient requires acute treatment, care, or  
42      services but is unconscious, unresponsive, or lacks the capacity to  
43      provide consent, and no health care representative is available to  
44      provide consent on the patient's behalf; the patient presents at an  
45      emergency department or urgent care facility or the visit is  
46      unscheduled, including inpatient consultations; or the practitioner  
47      does not provide direct care, treatment, or services to the patient.

**S3521 SINGER, HOLZAPFEL**

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1       A practitioner who violates the requirements of the bill will be  
2       liable to a civil penalty of up to \$1,000 for a first violation, and a  
3       civil penalty of up to \$2,500 for a second or subsequent violation.