

Health Care Professional Responsibility and Reporting Enhancement Act

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Nurse Cullen

Charles Cullen may be the most prolific serial killer in history. In the course of a 16-year nursing career it is believed that he murdered around 30 patients, spiking their IV bags at random or administering lethal injections in person.

Healthcare Risk Management Review
<http://www.hrmonline.com/article/the-worst-nurse>

DEATH ON THE NIGHT SHIFT

Cullen, defies the cliché about serial killers - that nobody suspected anything, nobody noticed anything strange.

Wherever he went, people found his behavior erratic, suspicious, even criminal.

http://www.nytimes.com/2004/02/29/nyregion/death-night-shift-16-years-dozens-bodies-through-gaps-system-nurse-left-trail.html?res=collection%3Finvestigative%3FCullen%2C%3ECharles&action=click&contentCollection=investigative®ion=stream&module=stream_unit&version=latest&contentPlacement=7&pgtype=collection

Warning Signs

- ▶ In hindsight, his life looks like a trail of signal flares, warning of instability and a capacity to harm himself or others.
- ▶ Yet Mr. Cullen was able to go from job to job for a decade after the first homicide accusation, confounding co-workers, government investigators and relatives of patients who died.

Charles Cullen: 60 Minutes Interview

60 Minutes Interview
Part 1

Cullen Law

- ▶ Health Care Professional Responsibility and Reporting Enhancement Act
 - ▶ The law concerns health care professionals working in health care entities, like hospitals, ambulatory surgery centers and long-term care facilities.

Requirements of the Law

- ▶ Criminal history background checks
- ▶ Reporting by licensed health care entities
- ▶ Reporting by health care professionals
- ▶ Disclosure by health care entity of reports filed

Basics

- ▶ Health Care Entity (HCE)
- ▶ Health Care Professional (HCP)

Health Care Entities (HCE)

- ▶ Facilities licensed by the NJDOH ;
- ▶ HMOs and carriers regulated by the NJDOBI;
- ▶ State or County psychiatric hospitals;
- ▶ State developmental centers;
- ▶ Staffing Registries; and
- ▶ Home care service agencies.

Health Care Professionals (HCP)

► Individuals licensed or authorized to practice a health care profession regulated by the Division of Consumer Affairs.

Health Care Professionals (HCP)

- Nursing
- Medical Examiners
- Dentistry
- Optometrists
- Pharmacy
- Chiropractic Examiners
- Acupuncture
- Physical Therapy
- Respiratory Care
- Orthotics & Prosthetics
- Psychological Examiners
- Social Work Examiners
- Veterinary Medical Examiners
- Ophthalmic Dispensers and Technicians
- Audiology & Speech-Language Pathology
- Marriage & Family Therapy
- Occupational Therapy
- Psychoanalysts
- Polysomnographers

Health Care Professionals (HCP)

► Nurse aides and personal care assistants certified by the Department of Health.

Relationship of HCE to HCP

- ▶ Employed by;
- ▶ Under contract;
- ▶ Has privileges granted; or
- ▶ Provides services via an agreement with a health care service firm or staffing registry.

Reporting

- ▶ A report is required if the HCE *takes action* based on the HCP's:
 - ▶ Impairment;
 - ▶ Incompetency; or
 - ▶ Unprofessional conduct.

Patient Care & Safety

- ▶ Incompetency and professional misconduct must adversely relate to patient care or safety.

Reporting: HCP Conduct

What is an impairment?

Impairment

Alcohol or chemical use, psychiatric or emotional disorder, senility or a disabling physical disorder resulting in:

- ▶ An inability to function at an acceptable level of competency, or
- ▶ Lacking the capacity to continue to practice with the requisite skill, safety and judgment.

Types of reportable actions (1 of 3)

- ▶ Report is required if the HCE
 - ▶ Summarily or temporarily revokes, suspends or permanently reduces, suspends or revokes the full or partial privileges or practice for reasons relating to the healthcare professional's impairment, incompetency or professional misconduct.

Reporting: HCE Action (2 of 3)

- ▶ Removal from the list of eligible employees of health service firm or staffing registry;
- ▶ Discharges from the staff; or
- ▶ Terminates or rescinds a contract to render services.

Reporting: HCE Action (3 of 3)

- ▶ Places conditions or limitations on the exercise of clinical privileges or practice for reasons including
 - ▶ Second opinion requirements;
 - ▶ Non-routine concurrent or retrospective review of admissions or care specifically tailored after a preliminary review of care;
 - ▶ Non-routine supervision by one or more members of the staff; or
 - ▶ Completion of *remedial education or training*.

What is Remedial Education/Training?

- ▶ Education or training required because the professional has exhibited
 - ▶ A lack of knowledge or skills expected of a professional who has had the same level of education and training and the same degree of professional responsibility.

What is Remedial Education/Training?

This DOES NOT include a tailored education plan for professionals in training programs.

Resigning & Voluntarily Relinquishing Privileges or Authorizations

A report is required if an individual resigns or voluntarily relinquishes privileges of authorizations from the staff while under review or during an investigation* of:

1. Quality of patient care rendered;
2. Conduct that demonstrates
Impairment; incompetence; or unprofessional conduct;

* whether or not the HCP knows of the investigation

Report Required: Leave of Absence

A report is also required if a leave of absence is granted for reasons relating to

- ▶ A physical, mental or emotional condition or drug or alcohol use which impairs the health care professional's ability to practice with reasonable skill and safety while under, or subsequent to, a review of the health care professional's patient care or professional conduct.

Leaves of Absence –NO REPORT

- ▶ No report FOR:
 - ▶ Pregnancy-related leaves of absence;
 - ▶ Participation, or an agreement to participate, in a board-approved intervention program
 - ▶ Professional must agree to follow, and then follow the treatment regimen or monitoring required by the program.

Leave of Absence: Monitoring Program

- ▶ If the HCP participates in a board-approved intervention program, the health care entity must:
 - ▶ Confirm HCP's participation in the program
 - ▶ Notify the HCP that a report would have been filed, but because of participation in and compliance with the intervention program, a report will not be filed.
- ▶ The HCE must file a report if the HCP is not in compliance with the intervention program.

Report Required: Medical Malpractice

HCP and HCE are both parties to a medical malpractice suit, resulting in

- ▶ settlement
- ▶ judgment or
- ▶ arbitration award.

Reporting Details

- ▶ Reports must be filed within 7 days of the HCE's action
- ▶ A copy of the report must be given to the HCP
- ▶ HCE shall file an additional report if
 - ▶ Restoration of the duties
 - ▶ Further limits on practice

Reporting Requirements of Health Care Professionals

- ▶ A HCP shall file a report if he or she is in possession of information which reasonably indicates another professional has demonstrated
 - ▶ An impairment,
 - ▶ Gross incompetence or
 - ▶ Professional misconduct which would present an *imminent danger* to an individual patient or to the public health, safety or welfare

Reporting Requirements of Health Care Professionals

- ▶ A HCP would not need to file a report if
 - ▶ He/she is only aware of the information about the HCP as a result of participation in a review or other proceeding conducted by or for a HCE;
 - ▶ He/she joins the entity in making and signing a report
 - ▶ He/she receives written assurance from the entity that it has made a report.

Disclosure of Information

- ▶ HCE shall furnish a written certification that the inquiry is made for the purpose of evaluating the HCP for hiring, continued employment or continued privileges.
- ▶ Upon receipt of the certification, the HCE shall disclose:
 - ▶ All reports filed, including restoration of privileges or the full or partial restoration of duties that had been limited, curtailed or prevented; AND
 - ▶ Any information that the HCE has at the time of the inquiry about the disposition of any matter that was the subject of a report regarding that HCP.
- ▶ HCE licensed by the Department of Health are required to use the Health Care Facility Inquiry Regarding Health Care Professional form (CN-9)

Health Care Reporting Scenarios

- ▶ A patient in a hospital reports that money was stolen from her bedside table. The hospital suspects that Mary, a licensed health care professional is responsible and suspends her while the matter is under investigation.
- ▶ Reportable or not reportable?

Health Care Reporting Scenarios

- ▶ A patient in a hospital reports that money was stolen from her bedside table. The hospital investigates and after reviewing video recordings discovers that John, a licensed health care professional, removed the money from the bedside table. The hospital terminates John.
- ▶ Reportable or not reportable?

Health Care Reporting Scenarios

▶ A patient in a hospital reports that money was stolen from her bedside table. The hospital investigates and after reviewing video recordings discovers that John, a licensed health care professional, removed the money from the bedside table. The hospital gives John a warning.

▶ Reportable or not reportable?

Health Care Reporting Scenarios

▶ A health care facility has received many complaints about the performance of a nurse. The last person to complain stated that the nurse could not follow the directions of the medical staff. The hospital discovers the nurse has been drinking alcohol while on the job. The hospital gives the nurse a leave of absence to participate in an alcohol recovery program in Vermont.

▶ Reportable or not reportable?

Health Care Reporting Scenarios

▶ A health care facility finds that a nurse is having difficulty providing patient care. As the hospital begins its investigation of the nurse, he asks for a leave of absence to participate in RAMP, the approved professional assistance intervention program for the Board of Nursing.

▶ Reportable or not reportable?

Health Care Reporting Scenarios

▶ During surgery, a medical doctor became frustrated and agitated because she was unable to reduce the patient's fracture. After slamming instruments down and yelling at the nursing staff, she physically punched the 81 year old patient in the right hip region while the patient was under anesthesia. The doctor was suspended.

▶ Reportable or not reportable?

Health Care Reporting Scenarios

▶ A health care facility discovers that a health care professional attached a patient to a ventilator, but forgot to turn on the ventilator before leaving the patient alone. The patient could not breathe for several minutes before another health care professional found the patient and turned on the ventilator. During the investigation, the health care professional resigned.

▶ Reportable or not reportable?

Health Care Reporting Scenarios

▶ A health care professional administered a dose of morphine to a patient which was 10 times the dose ordered by a doctor. While no long-term harm came to the patient, this dosage could have caused respiratory distress or death. The health care facility suspended the health care professional.

▶ Reportable or not reportable?

Health Care Reporting Scenarios

- ▶ A health care professional is required to participate in remedial education because he is being transferred from the oncology department, where he has worked for the past 5 years, to a new assignment in the pediatric department. Anyone transferring to pediatrics is required to participate in the training.
- ▶ Reportable or not reportable?

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Website: <https://www.njconsumeraffairs.gov/Pages/hcreporting.aspx>
