

**REPORT AND RECOMMENDATIONS
RELATING TO TITLE 45 -
PROFESSIONS AND OCCUPATIONS**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575**

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INTRODUCTION

Title 45 of the Revised Statutes contains provisions regulating the practice of certain professions and occupations. These provisions have accreted over the years beginning in the nineteenth century. Chapter 1 of the title contains general provisions; each of the other chapters is devoted to the regulation of a particular profession or occupation. The chapters regulating particular professions each contain varying combinations of provisions concerning the establishment of a regulatory board, licensing provisions, professional standards and, traditionally, enforcement provisions concerning license revocations, suspensions and other disciplinary actions. These provisions vary greatly from profession to profession, both in substance and in their procedural aspects.

The purpose of this project is to clarify certain of the enforcement provisions which concern license revocations and suspensions. An effort to standardize these provisions was made in 1978 with the adoption of the Uniform Enforcement Act, but questions remain as to the effect of the repeal provisions of that Act. In particular, the provisions permitting regulation of advertising and the provisions concerning drug and alcohol abuse are in need of revision and clarification.

In 1978 the Legislature enacted C. 45:1-14 to -26 to make uniform the enforcement provisions in Title 45 (hereafter, the Uniform Enforcement Act). The bill statement accompanying the legislation recounted the historical basis for the lack of uniform enforcement provisions, and stated:

Senate Bill No. 497 would establish uniform standards for disciplinary actions and the investigative and enforcements [sic] powers which may be exercised by the Attorney General in implementing professional and occupational licensing statutes. The purpose is to create a modern, effective enforcement mechanism consistent with the need for consumer and patient protection, to establish consistent standards for licensee conduct in dealing with the public, and to clarify the Attorney General's administrative authority in relation to the professional and occupational boards within the Division of Consumer Affairs.

To provide a full complement of remedial and protective powers in administrative actions, authority is conferred to enter cease and desist orders, to order corrective action to be taken and to order the return of any moneys, excluding consequential damages, acquired by unlawful practices. The act is deemed remedial, and does not alter any prior statutory enactments except those dealing with the substantive areas of investigative and enforcement powers and bases for disciplinary action. Prior law is repealed and superseded only to the extent that it is inconsistent with the terms of this act.

Bill Statement, S497, enacted as L.1978, c. 73. Reprinted in Title 45, Professions and Occupations, 45:12 to End (West Publishing Co. Cum. Supp. 1989) at 6-7.

The treatment of prior law as expressed in the bill statement was fully implemented by the bill. First, the legislative findings section of the enacted statute repeats the statements that the provisions are intended to establish uniformity, that they are remedial, and that they are to be afforded a liberal construction:

45:1-14. Legislative findings and declarations; liberal construction of act

The Legislature finds and declares that effective implementation of consumer protection laws and the administration of laws pertaining to the professional and occupational boards located within the Division of Consumer Affairs require uniform investigative and enforcement powers and procedures and uniform standards for license revocation, suspension and other disciplinary proceedings by such boards. This act is deemed remedial, and the provisions hereof should be afforded a liberal construction.

Second, in lieu of specific repealer provisions, the act included a general repealer provision:

45:1-26 Repeal of inconsistent acts and parts of acts

All acts and parts of acts inconsistent with this act are hereby superseded and repealed.

A year later, the Legislature enacted a bill, L.1979 c.432, which repealed specifically most of the sections generally repealed by the Uniform Enforcement Act. However, a few sections which seem to have been affected by the general repealer were nevertheless left in place:

45:5-8	Revocation of podiatry license;
45:6-7	Revocation of dentistry license;
45:6-22	Revocation of dental intern license;
45:9-16	Revocation of medical license;
45:9A-17	Revocation of hearing aid dispenser license;
45:11-35	Revocation of nursing school license;
45:12-11	Revocation of optometry license;
45:14-12	Revocation of pharmacist certificate;
45:14-12.2	Suspension of pharmacist certificate;
45:14-35	Revocation of pharmacy permit;
45:14B-24	Revocation of psychologist license.

Each of these sections establishes grounds for revocation of the license to practice a particular health care profession. However, many other revocation provisions relating to health care professions were specifically repealed: 45:9-37.7, physical therapists (old law); 45:9-42.13, bio-analytical laboratories; 45:9-42.41, clinical laboratories; 45:11-32, nurses; 45:12A-7, orthopists; 52:17B-41.22, ophthalmic dispensers. Similar sections applying to other kinds of professions were specifically repealed: e.g. 45:2B-18, accountants, and 45:3-8, architects. Other kinds of sections made invalid by the Uniform Enforcement Act, such as provisions on procedure for enforcement, were specifically repealed for all professions.

The continuation of certain license revocation provisions creates uncertainty in the law on this subject. Conflicting arguments can be made that the grounds for the revocation of a professional license are those in the provision of the Uniform Enforcement Act, 45:1-21, in the applicable unrepealed section, or in both. For the uniform provision, it could be argued that if a section is affected by the general repealer in 45:1-26, the failure to repeal it specifically is of no consequence. In support of the specific revocation sections, it could be argued that the Legislature, in failing to repeal a relatively coherent class of provisions, was expressing the view that they were not affected by the general repealer. Complicating the matter further, two of the sections, 45:9-16 (revocation of medical license) and 45:5-8 (revocation of podiatry license) were amended after the enactment of the general repealer. L.1982 c.91; L.1989 c.300. That amendment may constitute a re-enactment of the two sections if they were affected by the

general repealer, and may supersede the uniform section, 45:1-21, in regard to physicians and podiatrists.

While the effect of this uncertainty in the law is reduced by the similarity in grounds for revocation in the uniform and most of the individual provisions, any uncertainty in this important area is intolerable. Moreover, the similarity in provisions means that there is no purpose in retaining the individual revocation sections. To the extent that the individual provisions vary from the uniform provision and from each other, no reason appears for the variance. For example, the provisions on use of drugs and alcohol vary from none (audiologists); through addiction to narcotics (pharmacists); habitual intemperance (hearing aid dispensers); habitual use of drugs or chronic inebriety (optometrists); use impairing the practice of the profession (physicians, dentists, podiatrists, psychologists) to any habitual use of drugs or alcohol (dental technicians). It was the purpose of the Uniform Enforcement Act to eliminate inconsistency where it could not be justified by the needs of particular profession or occupation. Bill Statement, S497, quoted above.

It is the goal of this report to recommend statutory amendments to make the Uniform Enforcement Act provisions apply comprehensively to all professional boards within the Division of Consumer Affairs. That involves the repeal of the sections which conflict with the Uniform Enforcement Act but were not repealed specifically in 1979. In place of those sections, amendments are recommended to the Uniform Enforcement Act that will provide a uniform approach to issues raised by the repealed sections. In addition, examination of the statutes establishing the various professional boards reveals that some boards are not specifically granted the authority to make regulations. Amendments are recommended to cure this defect.

Last, since the enactment of the Uniform Enforcement Act, a number of boards regulating professions or occupations have been created. While the act was amended to be applicable to some of those boards, some were not specifically put in its ambit. See, 45:3B-1 to 24 (regulating audiologists and speech-language pathologists); and 45:14D-1 to 25 (regulating public movers and warehousemen). In both of these cases, the regulatory board is advisory; the ultimate regulatory authority rests with the Director of the Division of Consumer Affairs. The failure to apply the Uniform Enforcement Act explicitly to these regulatory activities bodies may result from an assumption that the act necessarily applies to regulatory activities of the Director. This report recommends statutory amendments to clarify the applicability of the Uniform Enforcement Act.

PROPOSED LEGISLATION

Amendment of 45:1-15. Application of act

The provisions of this act shall apply to the following boards and all professions or occupations regulated by, [or] through [such] or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage Counselor Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic

Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, [and] the State Board of Social Work Examiners[.], the State Board of Professional Counselors, the State Board of Public Movers and Warehousemen, and the Audiology and Speech-Language Pathology Advisory Committee.

COMMENT

This amendment clarifies the applicability of the Uniform Enforcement Act. It specifies that the act applies to Professional Counselors and Public Movers and Audiologists.

Amendment of 45:1-21. Grounds for refusal to admit to examination, refusal to issue or to suspend or revoke any certificate, registration or license.

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has engaged in acts constituting [been convicted of] any crime or offense involving moral turpitude or [any crime] relating adversely to the activity regulated by the board[. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction]
- g. Has had [his] authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;
- i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety ~~and~~ welfare;
- j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection.

For purposes of this[act:] subsection:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of permit for which application is made.

"Permit" has the same meaning as defined in section 1 of P.L.1991, c.421 (C.13:1D-101).

k. Has engaged in drug or alcohol use that is likely to impair the ability to practice the occupation or profession with reasonable skill and safety;

l. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution; or

m. Has permitted an unlicensed person or entity to perform an act for which a license is required.

COMMENT

Subsection (f) has been broadened to include not just the conviction of crime, but the commission of acts amounting to the crime. With that amendment, the subsection can reach illegal drug activity not resulting in a conviction.

Subsection (k) is new. The wording of this subsection is taken from provisions added to the sections regulating the revocation of physicians' and podiatrists' licenses as part of L.1989, c.300. In response to a recommendation made after the Commission's tentative report, the provision was broadened to include as grounds for license revocation any use of drugs or alcohol that may result in impairment of ability to practice.

Nearly every one of the license revocation sections recommended for repeal makes drug or alcohol abuse a ground for revocation. As is noted above, these provisions vary greatly in detail. At present, the only subsection in the Uniform Enforcement Act which bears on drug and alcohol use is 45:1-21(i), which provides that a board may discipline upon proof that a licensee:

i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare.

While this provision may be usable to revoke the licenses of persons whose drug or alcohol problems are of primary concern to regulators, its lack of specific mention of these particular problems is inconsistent with current attention given to this area. Lest the repeal of sections including specific provisions on drug and alcohol abuse be considered a reduction in the ability of the professional boards to revoke the licenses of persons whose drug or alcohol use is inconsistent with the proper practice of their profession, subsection (k) has been added.

In the interest of providing all grounds for revocation in one place, an additional subsection (l) has been added. It replaces 45:1-13, which then should be repealed.

Subsection (m) is new. Several of the license revocation provisions applicable to particular professions include as grounds activities such as employing an unlicensed person or working in association with an unlicensed person. See, e.g. 45:5-8 (sixth ground); 45:6-7(e) and (h); 45:9A-17(c)(2); 45:12-11(t) and (u). While such acts are probably covered by current subsections (e) and (h), it is preferable that they be made grounds for license revocation more explicitly. Subsection (m) performs that function and is stated in sufficiently general terms to replace all of the superseded provisions.

New Section. Regulations

Consistent with their enabling acts, this act, and the Administrative Procedure Act, the boards or agencies set forth in N.J.S. 45:1-15 are authorized to adopt regulations to serve the public health, safety and welfare

COMMENT

In reviewing the statutory provisions governing the activities of regulatory boards, it became apparent that the authority of some boards to enact regulations is quite specifically granted, while that of others is only implicit. Specifically, the power of the State Board of Medical Examiners to adopt regulations governing the practice of podiatry in 45:9-2 and the authority of the dental board to make regulations governing the practice of dentistry in 45:6-3 could be stated more clearly. This new section establishes the authority of the boards to adopt administrative regulations clearly and generally.

The authority to adopt regulations is of special importance in the area of advertising. Of the license revocation provisions recommended for repeal, some forms of advertising, other than false advertising, are made a ground for revocation in the following:

45:5-8; Podiatrists (eighth ground)

45:6-7; Dentists (subsection (g))

45:6-22; Dental interns (by reference to 45:6-7)

45:9-16; Physicians (ground (j))

45:12-11; Optometrists (subsections (h),(i),(j),(k),(p),(q),(r) and (u))

45:14-12; Pharmacists (subsections (d),(f) and (g))

45:14B-24; Psychologists (subsection (g))

Restrictions in this area have become problematic with the decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977) which held that price advertising by attorneys could not be forbidden without impermissibly restricting freedom of speech. Later Supreme Court cases have provided some guidance concerning the nature of limitations which may be placed on professional advertising consistent with the constitution. In In re R.M.J., 455 U.S. 191 (1982), the Court held:

Truthful advertising related to lawful activities is entitled to the protections of the First Amendment. But when the particular content or method of the advertising suggests that it is inherently misleading or when experience has proved that in fact such advertising is subject to abuse, the States may impose appropriate restrictions. 455 U.S. at 203.

And in Zauderer v. Office of Disciplinary Council, 471 U.S. 626 (1985) it held:

Commercial speech that is not false or deceptive and does not concern unlawful activities, however, may be restricted only in the service of a substantial governmental interest and only through means that directly advance that interest. 471 U.S. at 688.

The determination of whether a restriction on advertising or other commercial speech is valid, involves a four-step analysis described in Central Hudson Gas v. Public Service Comm., 447 U.S. 557, 563 (1980). First, it must be determined whether the speech concerns legal activity and is not misleading. If so, the speech is protected and before any restriction is valid, the three other steps must be completed. Second, the particular state interest on

which the restriction is based must be established, and the interest must be found to be substantial. Third, the restriction must be found to advance that interest directly. Fourth, the restriction must be found to be no more extensive than that which is necessary to advance the interest.

There has been a substantial amount of litigation in this area, but the cases do not provide certain guidance. Given the state of the law, a statutory restriction on advertising must be flexible enough to withstand challenge. This flexibility is achieved by allowing particular professional boards to enact regulations to control advertising and related business practices with precision when detailed restrictions are found to be in the public interest. With this approach, each board may restrict advertising in ways that are found appropriate to the extent that the developing case law allows. The Commission proposal clarifying regulatory authority provides power necessary to enact these regulations.

DELETION OF SPECIFIC LICENSE REVOCATION PROVISIONS

The following sections should be repealed:

Section	Profession affected
45:1-13	Health care professions
45:3B-21	Audiologists and speech-language pathologists
45:5-8	Podiatrists
45:6-7	Dentists
45:6-22	Dental interns
45:6-59	Dental auxiliaries
45:9-16	Physicians
45:11-35	Nursing schools
45:12-11	Optometrists
45:14-12	Pharmacists
45:14-12.2	Pharmacists
45:14-35	Pharmacies
45:14B-24	Psychologists

In addition 45:9A-17 should be amended as follows:

45:9A-17. Revocation, suspension or refusal to renew license or certificate of endorsement; grounds

The Director of the Division of Consumer Affairs shall have the power [upon] after notice and opportunity for a hearing to revoke, suspend, or refuse to renew any license, temporary license or certificate of endorsement issued pursuant to this act [for the following reasons:] as provided by L.1978 c.73 (C.45:1-21).

[a. Being convicted of an offense involving moral turpitude. The record of such conviction, or certified copy thereof from the clerk of the court where such conviction occurred or by the judge of such court, shall be sufficient evidence to warrant revocation or suspension.

b. By securing a license or certificate under this act through fraud or deceit.

c. For unethical conduct, ignorance, neglect, incompetence or inefficiency in the conduct of his practice. Incompetence shall include but not be limited to the improper or unnecessary fitting of a hearing aid. For the purposes of this act unethical conduct shall mean:

(1) The obtaining of any fee or the making of any sale by fraud or misrepresentation.

(2) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this act.

(3) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which, is misleading, deceiving, improbable or untruthful.

(4) Advertising a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.

(5) Representing that the services or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the word "doctor," "clinic," or like words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate.

(6) Habitual intemperance.

(7) Gross immorality.

(8) Permitting another to use his license or certificate.

(9) To imitate or simulate the trademarks, trade names, brands or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers; or

(10) To use any trade name, corporate name, trademark, or other trade designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature, or origin of any product of the industry, or of any material used therein, or which is false, deceptive, or misleading in any other material respect.

(11) To directly or indirectly give, or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.

d. For practicing while knowingly suffering with a contagious or infectious disease.

e. For the use of a false name or alias in his practice.

f. For violating any of the provisions of this act or rules or regulations promulgated hereunder.]

Each of the license revocation provisions recommended for repeal contains a slightly different array of revocation grounds. Many of the particular grounds are substantially identical to grounds in the Uniform Enforcement Act revocation provision. Other grounds proscribe conduct which is included in one of the more general uniform grounds. There are also situations where, although the approach taken by a ground in an individual revocation section is different from that taken by the cognate ground in the Uniform Enforcement Act section, the effect is the same and the subject matter is adequately covered. The effect of repealing these grounds is negligible. Grounds related to advertising or to substance abuse present a more complicated problem and are dealt with separately below.

Last, there are grounds in a few of the sections which do not fit well into the categories of the Uniform Enforcement Act provision. A number of the individual acts include provisions related to employing unlicensed persons, business relationships with unlicensed persons, or the nature of the business that may be operated by a licensee. The Commission decided that such matters are covered by the general provision on professional misconduct. To the extent that specific rules are necessary for particular professions, those rules can be adopted by regulation. Several of the individual acts include provisions allowing license revocation for intemperance, immorality and the like. To the extent that conduct falling into these categories should be ground for license revocation, it can be reached as professional impropriety or conviction of crime. Each of these is noted, and the effect of its repeal is examined.

45:1-13 Health care professionals:

EXISTING STATUTE	EQUIVALENT SUBSECTION OF 45:1-
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21

Inappropriate drug dispensing

(l); substantially identical

45:3B-21 Audiologists and speech-language pathologists:

EXISTING STATUTE	EQUIVALENT SUBSECTION OF 45:1-
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21

subsection (a); fraud in license

(a); substantially identical

subsection (b); fraud in services

(b); substantially identical

subsection (c); unprofessional conduct

(e); substantially identical

subsection (d); violation of act, regulations

(h); substantially identical

45:5-8 Podiatrists:

EXISTING STATUTE	EQUIVALENT SUBSECTION OF 45:1-
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21

first ground; impaired ability

(i) and proposed (k); substantially identical

second ground; crime

(f); substantially identical

third ground; false diploma

(a); conduct included

fourth ground; unprofessional conduct

(e); substantially identical

fifth ground; violation of reciprocity

(h); conduct included

sixth ground; employing unlicensed person

(m); substantially identical

seventh ground; crime	(f); substantially identical
eighth ground; false advertising	(b); conduct included
ninth ground; advertising	See "New Section - Regulations"
tenth ground; false name	(b); conduct included
eleventh ground; using "clinic" etc.	(b); conduct included

45:6-7 Dentists:

EXISTING STATUTE 21	EQUIVALENT SUBSECTION OF 45:1-
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subsection (a); fraud in license	(a); substantially identical
subsection (b); crime	(f); substantially identical
subsection (c); use of intoxicants	proposed (j); see note to subsection (j)
subsection (d); gross malpractice	(c); substantially identical
subsection (e); employing unlicensed persons	(m); substantially identical
subsection (f); violation of act	(h); conduct included
subsection (g); advertising	See "New Section - Regulations"
subsection (h); working for unlicensed person	(m); substantially identical

45:6-22 Dental interns:

EXISTING STATUTE 21	EQUIVALENT SUBSECTION OF 45:1-
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grounds for dentists included by reference; additional ground: violation of 45:6-20,21	(h); conduct included
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45:6-59 Dental auxiliaries:

EXISTING STATUTE 21	EQUIVALENT SUBSECTION OF 45:1-
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subsection (a);	(a); substantially identical
subsection (b);	(f); substantially identical
subsection (c);	proposed (j); see subsection (j)
subsection (d);	(c) and (d); adequately covered
subsection (e);	(h); conduct included

45:9-16 Physicians:

EXISTING STATUTE 21	EQUIVALENT SUBSECTION OF 45:1-
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ground (a); insanity	(i); included
ground (b); condition impairing ability	(i) and proposed (k); included
ground (c); crime	(f); substantially identical
ground (d); incapacity	(i); substantially identical
ground (e); advertising	See "New Section - Regulations"
ground (f); false diploma	(a) and (b); conduct included
ground (g); violation of 45:9-22	(h); conduct included

ground (h); gross malpractice	(c),(d) and (i); adequately covered
ground (i); incompetence	(c),(d) and (i); adequately covered
ground (j); advertising	See "New Section - Regulations"

45:9A-17 Hearing aid dispensers:

EXISTING STATUTE
21

EQUIVALENT SUBSECTION OF 45:1-

subsection (a); crime	(f); substantially identical
subsection (b); fraud in license	(a); substantially identical
subsection (c)(1); sale through fraud	(b); conduct included
subsection (c)(2); employing unlicensed person	(m); substantially identical
subsection (c)(3); deceptive advertising	(b); conduct included
subsection (c)(4); bait and switch	(b); conduct included
subsection (c)(5); use of "doctor" etc.	(b); conduct included
subsection (c)(6); intemperance	(e), (i) and proposed (k); see note
subsection (c)(7); immorality	(e), (f) and (i); see note
subsection (c)(8); lending license	(h); included
subsection (c)(9); imitating trademarks	(b); conduct included
subsection (c)(10); false trade name	(b); conduct included
subsection (c)(11); payment for referral	(e); conduct included
subsection (d); disease	(i); see note
subsection (e); false name	(b) and (h); conduct included
subsection (f); violation of act, regulations	(h); substantially identical

NOTE

Subsections (c)(6) and (7) make "habitual intemperance" and "gross immorality" grounds for revocation. These grounds are both vague and broad. Conduct which could be prosecuted appropriately under them would be covered by subsections (e), (f) (with the proposed amendment), (i), or proposed subsection (k) of 45:1-21. Subsection (d) is unduly broad; in theory it would include the common cold; not every contagious disease is a danger to patients. To the extent appropriate, this ground is covered by subsection (i) of 45:1-21.

45:11-35 Nursing schools:

EXISTING STATUTE
21

EQUIVALENT SUBSECTION OF 45:1-

first ground; fraud	(a) and (b); conduct included
second ground; dishonesty	(a) and (b); conduct included
third ground; incompetency	(c), (d) and (i); adequately covered
fourth ground; acts derogatory to nursing	(e); see note
fifth ground; failure to obey regs.	(h); included
sixth ground; crime	(f); substantially identical
seventh ground; failure to obey order	(e) and (h); conduct included

NOTE

The fourth ground, conduct derogatory to nursing, is vague, but where that conduct constitutes professional misconduct, it is covered by subsection (e) of 45:1-21.

45:12-11 Optometrists:

EXISTING STATUTE
21

EQUIVALENT SUBSECTION OF 45:1-

subsection (a); fraud in obtaining license	(a); substantially identical
subsection (b); incompetence	(c), (d) and (i); adequately covered
subsection (c); fraud on patients	(b); conduct included
subsection (d); inebrity and use of drugs	(i) and proposed (k); adequately covered
subsection (e); disease	(i); included
subsection (f); crime	(f); substantially identical
subsection (g); crime	(f); substantially identical
subsection (h); false advertising	(b); conduct included
subsection (h); advertising	See "New Section - Regulations"
subsection (i); directories	See "New Section - Regulations"
subsection (j); displaying goods	See "New Section - Regulations"
subsection (k); displaying license	See "New Section - Regulations"
subsection (l); use of "doctor"	(b) and (e); adequately covered
subsection (m); use of "clinic" etc.	(b) and (e); adequately covered
subsection (n); working for law violator	(m); substantially identical
subsection (o); fraud	(b); included
subsection (p); soliciting business	See "New Section - Regulations"
subsection (q); professional cards	See "New Section - Regulations"
subsection (r); signs	See "New Section - Regulations"
subsection (s); violating regulation	(h); included
subsection (t); ass'n. with unlicensed person	(m); substantially identical
subsection (u); working in store	See "New Section - Regulations"
subsection (u); working for unlicensed person	(m); substantially identical
subsection (v); required exam	(e) and (h)
subsection (x); gross malpractice	(c); substantially identical

45:14-12 Pharmacists:

EXISTING STATUTE
21

EQUIVALENT SUBSECTION OF 45:1-

subsection (a); paying rebates	(e); conduct included
subsection (b); providing prescription forms	See "New Section - Regulations"
subsection (d); claiming superiority	See "New Section - Regulations"
subsection (e); fostering interest of group	(e); see note
subsection (f); giving rebates	See "New Section - Regulations"
subsection (g); advertising prices	See "New Section - Regulations"

NOTE

Subsection (e) requires as a ground for revocation conduct which "compromises the quality or extent of professional services made available." If this language is read narrowly, any such conduct would be covered by subsection (e) of the Uniform Enforcement Act provision as unprofessional conduct. However, if this language is read broadly, and the subsection is interpreted as forbidding senior citizen discounts or requiring every pharmacist to participate in every prescription insurance program, no part of the uniform provision would replace it automatically. If that kind of restriction is intended, it should be promulgated specifically by regulation of the board. The proposed section on advertising would give authority for that kind of regulation if the board does not already possess the authority. Violation of regulation is a ground for license revocation under the Uniform Enforcement Act, 45:1-21 subsection (h).

45:14-12.2 Unlawful sale of narcotics:

EXISTING STATUTE 21	EQUIVALENT SUBSECTION OF 45:1-21
sale in violation of 24:18-7 or 10	(h) and (e); conduct included

45:14-35 Pharmacies:

EXISTING STATUTE 21	EQUIVALENT SUBSECTION OF 45:1-21
violations of pharmacy chapter 14-12 and 12.2.	(h); included; see also, disposition of 45:

45:14B-24 Psychologists:

EXISTING STATUTE 21	EQUIVALENT SUBSECTION OF 45:1-21
subsection (a); fraud in application	(a); substantially identical
subsection (b); false name	(a) and (b); conduct included
subsection (c); crime	(f); substantially identical
subsection (d); intemperance, use of drugs	proposed (j); conduct included
subsection (e); violation of act, regulation	(h); substantially identical
subsection (f); negligence	(c) and (d); appropriately covered
subsection (f); misconduct	(e); substantially identical
subsection (g); advertising	See "New Section - Regulations"