

SENATE BILL NO. 3465

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 3465 with my recommendations for reconsideration.

This bill revises and modernizes the requirements for licensure to practice mortuary sciences. The bill does so by making numerous technical changes to the current law and by updating the required areas of focus for the licensure exam. The bill also requires the State Board of Mortuary Sciences (the "Board") to presume that a licensee successfully passed the required examination despite any adverse action regarding the licensee's examination score that occurred after the licensee applied and was approved for licensure. This presumption would be overcome only when the Board determines, after providing notice and an opportunity to be heard, that the licensee has engaged in misconduct that, under the statute, justifies a suspension or revocation of a license.

This new formulation seeks to address a cheating scandal related to the mortuary sciences examination administered by an independent national testing organization. As with many other regulated professions, New Jersey law requires those seeking licensure in the practice of mortuary science to pass an examination to determine their fitness and qualification for licensure, which includes a range of subjects and practices such as anatomy, physiology, pathology, chemistry, disinfection, hygiene, sanitary science, bacteriology, dissection, the care, preservation, embalming, transportation, and burial, cremation or other disposal of dead human bodies, the signs of death and the manner in which death may be determined, applicable laws and rules governing vital statistics, preparation and transportation for

burial or other disposal of dead human bodies, the provisions of mortuary science law and related rules and regulations adopted by the board, professional ethics, and mortuary accounting.

In 2013, the organization that administers the examination began investigating allegations that there was a concerted effort by a test preparation company to gather examination materials, including questions, and share them with students. The organization subsequently invalidate the examination scores of licensees whose test results were called into question due to the implications of its investigation, including a number in New Jersey.

The Board is aware of these facts and has already taken action that would allow license retention without disciplinary action for those affected New Jersey individuals whose examination scores were invalidated, in some cases many years after passage, by the testing organization following the results of its investigation. Trying to balance the interests of fairness to now-established licensees with its obligation to protect the public health, safety and welfare by ensuring that only properly qualified individuals are licensed to engage in the practice of mortuary science in New Jersey, the Board offered the affected individuals certain remedial options to resolve the concerns raised by the test score invalidation, initially offering them the choice of re-taking and passing the examination or completing certain additional continuing education requirements by December 31, 2019. Subsequently, the Board voted to offer affected individuals the additional specific alternative of requesting an investigative inquiry before the Board, at which the individual would be provided with an opportunity to address information the Board received from the testing organization regarding the invalidation of that

individual's test score and any allegations of cheating or other inappropriate conduct. Depending on the findings, this investigative inquiry could result in possible disciplinary action or closure of the matter with no further proceedings.

In contrast, under the bill, implicated licensees are not obligated to take corrective action or request an inquiry, but are instead presumed to have successfully passed all required examinations, despite the invalidation of the scores at issue. Under the formulation that would be established by the bill, if the Board wished to determine that an applicant for a license has obtained a certificate, registration, license, or authorization to sit for an examination through "fraud, deception, or misrepresentation," N.J.S.A. 45:1-21, as allegedly happened here, the Board would be required to allow licensees to dispute their involvement in the controversy before it finds them in violation of the statutory requirements. Thus, even licensees who initially pass the examination but whose scores are subsequently invalidated due to the discovery of cheating, misconduct or other irregularities, rendering them unable to meet the statutory requirements for licensure, would be entitled to a presumption that allows them to hold themselves out to the public as duly qualified to practice mortuary science. I cannot sign into law a provision that, however well-intentioned, may serve to undercut the integrity of the profession and has the potential to reward those who do not play by the rules to obtain licensure. Fortunately, in light of the Board's actions to afford the affected individuals appropriate remedial relief, the need for this kind of provision has been obviated.

While the bill contains other practical updates to the mortuary science licensure requirements, the provision requiring presumption of passage is misguided and unnecessary in light of the Board's reasonable resolution.

Therefore, I herewith return Senate Bill No. 3465 and recommend that it be amended as follows:

Page 4, Section 1, Lines 2-14: Delete in their entirety
Pages 4, Section 1, Line 15: Delete "(c)" and insert "(b)"

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor