



**SUMMARY OF CHANGES TO DELAWARE LAW  
CONCERNING PHYSICIANS' DUTIES  
AND POLICIES AND PROCEDURES OF  
THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE  
ENACTED BY THE 145TH GENERAL ASSEMBLY**

*Special thanks to Richard Galperin and Dennis D. Ferri* MorrisJames  
DELAWARE

## TABLE OF CONTENTS

New Laws Related to Physicians and Minors.....	1
Duties Regarding Certification for Medical Licensing.....	1
Your Duties to Report Yourself and Others .....	2
Reports Against You.....	3
If You are a Respondent .....	3

### NOTES

1. All laws are effective September 1, 2010 unless otherwise noted.
2. This is a general summary only. If you have a decision to make which you believe is impacted by these new laws, it is recommended that you contact the Medical Society of Delaware, the Board of Medical Licensure and Discipline or a lawyer.
3. For specific statutory language please refer to Title 18, Chapter 68, and Title 24, Chapter 17.

**NEW LAWS RELATED TO  
PHYSICIANS AND MINORS**

- I. Repeal of Statute of Limitations for Civil Claims of Sexual Abuse of a Child Patient
  - A. Encompasses causes of action based on sexual acts which would constitute a criminal offense under the Delaware Code.
  - B. Opens two-year window from date of enactment (7/13/2010) for claims that were otherwise barred by the statute of limitations
  - C. Nothing contained in this section shall apply to conduct by a health care provider which is consistent with the recognized standard of care or the subject of a written consent
  
- II. Treatment and Examinations of Minors (effective 7/1/11)
  - A. Parent, guardian or adult staff member shall be present during examination of minor disrobed or partially disrobed; HOWEVER,
  - B. Minor patient may decline with consent of parent or guardian.
  - C. "Minor" is defined as 15 years old or younger for purposes of this law.
  - D. You must provide written, conspicuously posted notice (or other means of ensuring the patient understands)
  - E. You must note in the record the name of each person present

**DUTIES REGARDING CERTIFICATION  
FOR MEDICAL LICENSING**

- I. New and Renewal Application Requirements
  - A. "Has reviewed and acknowledges the applicant's own duties to report unprofessional conduct...and to report child abuse"
  - B. No license to any applicant listed on Adult Abuse Registry or Child Protection Registry
  - C. Must disclose whether the applicant has ever been the subject of an investigation by any licensing authority, medical association, hospital or other healthcare institution (effective 7/1/11)
  - D. Service letters required from prior hospitals (effective 1/30/11)

II. Renewal Requirements Only

- A. See A, B and C above
- B. Evidence of “completion of training”
  - 1. On recognition of child sexual and physical abuse
  - 2. On recognition of exploitation and domestic violence
  - 3. Reporting obligations under Medical Practice Act (as discussed in next sections) and under Title 16 §903 (reporting child abuse and neglect)
- C. Your criminal history will be reviewed every 6 months (effective 7/1/11), and therefore you must be fingerprinted at your expense every ten years. If you received your initial license before July 1, 2007, you must submit your first set of fingerprints before January 1, 2012.

**YOUR DUTIES TO REPORT  
YOURSELF AND OTHERS**

I. Personal Reporting Requirements

- A. “Any change in hospital privileges and any disciplinary action taken by a medical society within 30 days (no restriction on type or extent of disciplinary action or change in privilege)
- B. “Any reasonably substantiated incidents involving violence, threat of violence, abuse or neglect...” within 30 days (effective 1/30/11)
- C. Any civil or criminal investigation in any jurisdiction concerning certification, license or authorization to practice medicine within 30 days (note: effective 9/1/10, but apparently inadvertently omitted from Code language after 1/30/11)
- D. All medical malpractice claims settled or adjudicated to verdict within 30 days (not new)
- E. All reports to authorities against you for child abuse or neglect and adult abuse within 30 days (not new) (note: apparently inadvertently omitted from Code language after 1/30/11)

II. Reporting Others

- A. Physicians who are your patients who, in your opinion, may be unable to practice medicine with reasonable skill or safety

- B. All persons certified to practice medicine have affirmative duty to report in writing within 30 days any other physician who you “reasonably believe” (not new):
  - 1. May be guilty of unprofessional conduct
  - 2. Unable to practice medicine with reasonable skill or safety

### **REPORTS AGAINST YOU**

- I. Any Member of the Public, or the Board, or Executive Director, May File a Complaint Concerning Any Aspect of the Practice of Medicine (not new)
  - A. Can now be anonymous (unsigned or not in writing)
  - B. Executive Director can maintain confidentiality of either complainant or respondent (you) from the Board
  - C. You will be notified within 20 – 60 days before hearing if the Executive Director determines the complaint to be “valid and well founded” (not new)
  - D. All complaints go to Director of Professional Regulations (priority to allegations of sexual misconduct)
- II. Unprofessional Conduct
  - A. Conviction of felony sexual offense
  - B. “Dishonorable, unethical...conduct” (not new)
  - C. “Misconduct, including but not limited to sexual misconduct, incompetence, or gross negligence, or pattern of negligence in the practice of medicine (underlining new)
  - D. Willful failure to report violation of the Section 1769B Title 24
  - E. Willful failure to report others (effective 7/1/11)

### **IF YOU ARE A RESPONDENT**

- I. Changes to the Board
  - A. Name Change – now BOARD OF MEDICAL LICENSURE AND DISCIPLINE

- B. Board Composition – still 16 members – now 8 doctors, 7 lay persons and Director of the Division of Public Health
- C. Hearing Examiner – an appointed lawyer (5 year term) to hear emergency temporary suspension and other matters in lieu of 3 member panel as determined by the Executive Director
- D. Must promulgate “rules and regulations establishing guidelines for disciplinary sanction”

II. Hearing Process

- A. Open hearings
- B. Evidence of peer review meetings can be subpoenaed by Attorney General regardless of outcome of peer review
- C. Executive Director can demand diagnostic mental or physical exam (not new)
- D. Temporary suspensions (not new), but now a hearing examiner may hear the matter instead of panel, and as little as 24 hours may be sufficient
- E. Penalties increased
  - 1. For violation of Duty to Report - \$10,000-\$50,000
  - 2. Overall range not to exceed \$50,000