

ETHICAL CONSIDERATIONS THAT
ARISE IN LONG TERM CARE
PART I – CULLEN ACT



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Ahsan A. Jafry, Esq

Burns White LLC

aajafry@burnswhite.com

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CHARLES CULLEN

- Most Prolific Serial Killer in American History
- Confessed to killing 40 patients during 16 year nursing career but real number could be in the hundreds
- Worked in several hospitals and nursing homes in NJ and PA during his 16 year career
- Started in 1988 when working for St. Barnabas and finally caught in 2003 at St. Peters Medical Center



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AFTERMATH OF CHARLES CULLEN CASE

How was he able to get away with this?

- Former employers were suspicious of his actions
- Lack of requirements to report on suspicious behavior by medical workers
- Inadequate legal protection for employers

Legislative Reaction to the Cullen Case

- Pennsylvania, New Jersey, and 35 other states adopted new laws:
- encourage former employers to give honest appraisals
- Gives former employers immunity when they provide information

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HEALTH CARE PROFESSIONAL RESPONSIBILITY AND REPORTING ENHANCEMENT ACT ("THE CULLEN ACT")

Applies when as a result of a health care professional's "impairment, incompetency, or professional misconduct relates adversely to patient care or safety":

- Full or partial privileges revoked, suspended, or reduced
- Removed from list of eligible employees
- Discharged from staff
- Contract terminated
- Conditions or limitations on clinical privileges
- Voluntary resigns from staff while under investigation
- Voluntarily relinquishes partial privilege or authorization to perform a specific procedure
- Granted a leave of absence for reasons relating to drug, or alcohol use
- Party to a Medical Malpractice liability suit

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HEALTH CARE PROFESSIONAL RESPONSIBILITY AND REPORTING ENHANCEMENT ACT ("THE CULLEN LAW")

Reporting Obligations:

- Required to notify the N.J. Division of Consumer Affairs in writing when aware of the employees actions in 7 days.
- A copy of the notification is also given to the health care professional under investigation
- Maintain all records relating to the incident for 7 years
- Upon inquiry from another health care facility must provide for the next 7 years:
 1. a copy of the notification form and any supporting documentation and
 2. Information about job performance as it relates to patient care and reason for employee's separation

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HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL

SECTION I – INQUIRY (TO BE COMPLETED BY INQUIRING HEALTH CARE FACILITY)	
INQUIRING HEALTH CARE FACILITY	
Name of Inquiring Health Care Facility	Date of Inquiry
Address of Inquiring Health Care Facility	
Name and Title of Contact Person	Phone
Email Address	Fax Number
Certification pursuant to N.J.A.C. 13:45E-6.1(a): I certify that the Health Care Facility has authorized me to make this inquiry, and that I am making it for the purpose of evaluating a health care professional for (check all that apply): <input type="checkbox"/> Employment <input type="checkbox"/> Granting Privileges <input type="checkbox"/> Continuing Employment <input type="checkbox"/> Continuing Privileges	
Signature	Date
HEALTH CARE FACILITY TO RECEIVE THIS INQUIRY	
Name of Health Care Facility	
Address of Health Care Facility	
Name and Title of Contact Person (if known)	Phone
Email Address	Fax Number
HEALTH CARE PROFESSIONAL ABOUT WHOM INQUIRY IS BEING MADE	
Name of Health Care Professional	
Maiden or Other Name(s) Used	
Credential of Professional	Professional License/Certification Number
SECTION II – RESPONSE (TO BE COMPLETED BY HEALTH CARE FACILITY RESPONDING TO THIS INQUIRY)	
Date Inquiry Received	Date Response Sent
Name of Health Care Professional	
Title(s) of Positions Held by Health Care Professional	
Dates the Health Care Professional was Employed by Responding Facility From: _____ To: _____	Is the Health Care Professional's employment ongoing with the Health Care Facility responding to this request? <input type="checkbox"/> Yes <input type="checkbox"/> No
Dates the Health Care Professional held Privileges at Responding Facility From: _____ To: _____	Does the Health Care Professional continue to hold privileges with the Health Care Facility responding to this request? <input type="checkbox"/> Yes <input type="checkbox"/> No

HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL (Continued)

SECTION II – RESPONSE (Continued)
If the health care professional no longer is employed by, and/or no longer holds privileges at, the responding health care facility, state the reason for the separation of the health care professional from employment and/or the cessation of the health care professional's privileges at the responding health care facility (attach additional sheets if necessary):
During the seven years preceding the date of this inquiry, have you submitted any report about this health care professional to (check all that apply): <input type="checkbox"/> the Clearinghouse Coordinator within the Division pursuant to N.J.S.A. 26:2H-12.2b? <input type="checkbox"/> the Medical Practitioner Review Panel pursuant to N.J.S.A. 26:2H-12.2a? and/or <input type="checkbox"/> any Board? (state Name of Board): _____
If you submitted a report to any of the entities above, please indicate the status of the Report: <input type="checkbox"/> Clearinghouse Coordinator: <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected <input type="checkbox"/> Pending <input type="checkbox"/> Medical Practitioner Review Panel: <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected <input type="checkbox"/> Pending <input type="checkbox"/> Board: <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected <input type="checkbox"/> Pending
If report is either "accepted" by or "pending" before any of the above, attach copies of reports and any supporting documentation submitted to these entities when returning this form to the inquiring facility. If report was "rejected," do not attach copies.
Did the health care professional receive a written performance evaluation from the responding facility? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No," proceed to Section III.) If "Yes," a. was the evaluation signed by the evaluator? <input type="checkbox"/> Yes <input type="checkbox"/> No b. was the evaluation shared with the employee? <input type="checkbox"/> Yes <input type="checkbox"/> No c. did the health care professional have the opportunity to respond to the evaluation? <input type="checkbox"/> Yes <input type="checkbox"/> No If the answer to any of the questions above is "No," proceed to Section III.
If the answers to all questions above are "Yes," then, taking into consideration the health care professional's response to the evaluation, if any, provide information about the health care professional's job performance as it relates to patient care. (See instructions. Attach additional sheets if necessary.)
Is the health care professional eligible for re-employment by the responding health care facility? <input type="checkbox"/> Yes <input type="checkbox"/> No
Is the health care professional eligible for reinstatement of privileges at the responding health care facility? <input type="checkbox"/> Yes <input type="checkbox"/> No
SECTION III – SIGNATURE
I certify that the foregoing statements made by me are truthful and made in good faith and without malice. I am aware that if any of the foregoing statements made by me are untruthful, made in bad faith, and/or with malice, I am subject to punishment and the responding health care facility is subject to penalties pursuant to N.J.S.A. 26:2H-12.2c and N.J.A.C. 8:30-1.6.
Name (print) _____ Title _____
Signature _____ Date _____

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ETHICAL CONSIDERATION No. 1

When is it Appropriate to Report?

- Ethical obligation not to over-report because reporting places an albatross around the career of a nurse
- Reporting obligation does not apply to “personal conduct, such as tardiness, insubordination, or other similar behavior which does not relate to patient care or safety”



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ETHICAL CONSIDERATION No. 2

What information should be provided?

- Documentation includes incident report and investigation of the event, records pertaining to disciplinary proceedings
- Job performance documentation can only be used if: (1) the evaluation is signed by the evaluator and shared with employees and (2) the employee has had the opportunity to respond and (3) the employee's response, if any, has been taken into consideration
- Confidentiality of substance abuse and mental health have to be maintained under Federal Law 42 U.S.C.A. § 290dd-2

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ETHICAL CONSIDERATION No. 3

How to maintain Civil Liability Immunity?

- Immunity applies as long as your actions are done in good faith
- Make sure that all internal policies and procedures pertaining to disciplinary proceedings are followed
- Be mindful of potential allegations that the employee was scapegoated or that the discipline was retaliatory or improper
- Maintain consistency in the types of incidents that you report



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ETHICAL CONSIDERATION No. 4

Problems with The Cullen Act

- Timeframe for reporting Creates potential for a rush to judgment
- Reporting obligations apply regardless of the outcome of the investigation (i.e. even if there is no findings employers must continue to report about the incident for 7 years)
- Backlog of reporting creates significant delays in investigations
- The Law does not provide clear guidelines as to what should be reported
 - A task force set up to develop guidelines after the law was enacted in 2005 was not able to come up with a consensus
 - Employers are using their own discretion in determining what should be reported

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ETHICAL CONSIDERATION No. 5

Is the Cullen Act Necessary

A Michigan Study performed after the Cullen case found these statistics:

- Of the more than 5,500 certified nurse's aides (CNAs) studied, 9 percent had a total of 836 outstanding criminal warrants, and 3 percent, or 170, had past criminal convictions.
- 25 percent of residential care facility employees committing crimes against residents since 2002 had past criminal convictions.

Difficult to get accurate and complete information

- Criminal records are generally maintained by name only within each state's county court system
- This makes it difficult to get information for an employee crossing state lines
- Places immense strain on HR departments