



State of New Jersey

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TO: All Members of Professional and Occupational Boards and Committees

CC: Acting Director, Division of Consumer Affairs
All Executive Directors of Professional and Occupational Boards and Committees

FROM: Andrew J. Bruck, Acting Attorney General

DATE: December 3, 2021

SUBJECT: Rulemaking on Discrimination in Licensed Professions

Dear Board Members,

I am writing to you pursuant to N.J.S.A. 45:1-17(b) to inform you of my intent to exercise my authority to initiate rulemaking, on behalf of all professional and occupational boards and committees supported by the Division of Consumer Affairs, concerning the discipline of professionals who engage in prohibited discrimination or harassment in the course of their professional practice. This rulemaking will clarify and firmly establish that such discriminatory conduct constitutes professional or occupational misconduct sanctionable by licensing boards and committees.

The COVID-19 pandemic has exposed and exacerbated racial disparities that have long plagued our country and state. All of us in government have an obligation to use our authorities and resources to address this problem, and I am committed to ensuring that we take concrete action to do so across the Department of Law and Public Safety.

Our Department's actions to promote racial justice are only part of the State's broader efforts to ensure fairness and justice for all New Jersey residents. For example, reflecting that minority communities have seen a disproportionate share of COVID-19 cases, hospitalizations,



and deaths,¹ Governor Murphy has signed legislation to address racial disparities in healthcare.² More recently, Governor Murphy established a Wealth Disparity Task Force, to examine the causes and remedies for longstanding wealth disparities that affect Black and Hispanic or Latinx New Jerseyans, including not only disparities in healthcare but also disparities related to the economy, housing, criminal justice, and education.³

Systemic racism and other barriers to equity for historically disadvantaged groups remain entrenched throughout American life, so it is not surprising that systemic inequities and discrimination have been associated with a wide variety of professional services. For instance, reports indicate that members of historically underrepresented groups continue to face obstacles to entering licensed professions; that people of color are still too often treated differently as consumers of professional services because of their race; and that other inequities exist in access to professional services.⁴

Fully addressing these issues will require systemic change that targets root causes of deep-seated inequities. But the need for comprehensive solutions does not mean that the cause is not urgent, or that we cannot act immediately to advance racial justice and equity for underserved communities.

¹ See Brittany Holum-Trundy, *Unprecedented and Unequal: Racial Inequities in the COVID-19 Pandemic*, New Jersey Policy Perspective (Oct. 14, 2020), <https://www.njpp.org/publications/report/unprecedented-and-unequal-racial-inequities-in-the-covid-19-pandemic/>. These disparities are not new or unique to New Jersey or to the pandemic, but rather reflect longstanding disparities in healthcare outcomes associated with race and other legally protected characteristics. See, e.g., David R. Williams & Selina A. Mohammed, *Racism and Health I: Pathways and Scientific Evidence*, 57 *Am. Behavioral Scientist* 1152 (2013); Zinzi D. Bailey, Nancy Krieger, Madina Agénor, Jasmine Graves, Natalia Linos & Mary T. Bassett, *Structural Racism and Health Inequities in the USA: Evidence and Interventions*, 389 *Lancet* 1453 (2017).

² See Press Release, Governor Murphy Signs Legislation Creating COVID-19 Pandemic Task Force on Racial and Health Disparities (June 11, 2021), <https://www.nj.gov/governor/news/news/562021/20210611b.shtml>.

³ See Press Release, On Juneteenth, Governor Murphy Announces Leadership of Wealth Disparity Task Force (June 18, 2021), <https://www.nj.gov/governor/news/news/562021/20210618d.shtml>.

⁴ See, e.g., Debra Kamin, *Black Homeowners Face Discrimination in Appraisals*, *N.Y. Times* (Aug. 25, 2020; updated Aug. 27, 2020), <https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html>; Andre M. Perry, *How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-Term Economic Impacts on Borrowers of Color*, Testimony Submitted to the U.S. House of Reps. Comm. on Financial Servs., Subcomm. on Oversight and Investigations (Feb. 24, 2021), <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba09-wstate-perrya-20210224.pdf>; Michael Cohn, *Women Split on How Firms Deal with Gender Discrimination*, *Accounting Today* (Oct. 31, 2019), <https://www.accountingtoday.com/news/women-split-on-how-accounting-and-tax-firms-deal-with-gender-discrimination>; Danielle Boykin, *Bias in the Engineering Workplace*, *PE* (May/June 2017), <https://www.nspe.org/resources/pe-magazine/may-2017/bias-the-engineering-workplace>.

Among the things that we can do immediately is affirm our commitment to eradicating unlawful discrimination and bias-based harassment in the professions and occupations for which licensure is our responsibility.

Today, discrimination on the basis of protected characteristics in the provision of professional services or in employment constitutes “professional or occupational misconduct,” within the meaning of N.J.S.A. 45:1-21(e), and licensees who engage in such misconduct are subject to professional discipline. Nevertheless, only the Board of Social Work Examiners, the Alcohol and Drug Counselor Committee, and the Board of Psychological Examiners currently have explicit anti-discrimination regulations.⁵ Given that discrimination in the provision of professional services—including but not limited to health care services—can result in severe, even deadly, consequences, it is critical that the rest of the boards and committees follow suit.

Discrimination amounting to professional misconduct warrants discipline regardless of which board issued the offender’s license. No licensee should think otherwise. So we must make clearer to the public – including licensees and those whom they serve – that *all* of New Jersey’s professional boards have authority to discipline professionals who engage in unlawful discrimination and harassment.

N.J.S.A. 45:1-17(b) offers the best vehicle for clarifying boards’ authority to discipline licensees for unlawful discrimination and bias-based harassment in appropriate cases. The statute provides an efficient means of making parallel revisions to multiple boards’ rules on disciplinary matters without conducting dozens of separate rulemakings. Specifically, the statute authorizes the Attorney General, in certain circumstances, to “promulgate substantive rules and regulations consistent with the provisions of any statute governing the activities of any licensing agency, board or committee located within the Division of Consumer Affairs, which shall be limited to disciplinary matters and arbitrary restrictions on initial licensure.” The Attorney General may proceed in this fashion “[a]fter advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards

⁵ See N.J.A.C. 13:44G-10.7(e) (“A social worker shall not condone or engage in any form of discrimination on the basis of an individual's race, age, religion, color, national origin, marital status, gender, sexual orientation, gender identity, physical or mental disability, or any other preference or personal characteristic, condition or status.”); N.J.A.C. 13:34C-1.9(b)(5) (defining professional or occupational misconduct to include “[d]iscriminating against any client, patient, student, supervisee or colleague on the basis of color, race, gender, religion, national origin, ancestry, age, disability or sexual orientation”); N.J.A.C. 13:42-10.4(d) (“A licensee [of the Board of Psychological Examiners] shall maintain competence consistent with professional responsibilities, including the following: . . . (4) A licensee shall refuse to engage in or condone hiring, promotion or training practices that are inhumane or that result in illegal or otherwise unjustifiable discrimination on the basis of race, handicap, age, gender, sexual preference, religion or national origin.”).

Similarly, New Jersey’s Rules of Professional Conduct for lawyers specify that it is professional misconduct for a lawyer to “engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.” N.J. R.P.C. 8.4(g).

to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice.” N.J.S.A. 45:1-17(b).

I understand that codification of the anti-discrimination principle is already the subject of discussion among many boards and consultation between board members and Division of Consumer Affairs representatives. My intent to initiate rulemaking under N.J.S.A. 45:1-17(b) is based on the efficiency of that process, not on any sense that the boards themselves are anything less than fully committed to ending discrimination in the provision of professional services. I appreciate board members’ support for taking this step and welcome the opportunity to continue working together to address our shared vision.

To that end, I am advising that I will move to promulgate new rules to incorporate in N.J.A.C. 13:45C an express declaration prohibiting licensees from engaging in any form of prohibited discrimination or bias-based harassment against any current or prospective client, patient, student, supervisee, colleague, or employee. Specifically, the proposed rules will clarify that a licensee shall be deemed to have engaged in professional or occupational misconduct, and may be subject to discipline, if they violate the Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, or any other applicable federal or state civil rights or anti-discrimination law against a client, student, supervisee, employee, or colleague or while engaged in conduct that has a direct or substantial relationship to the activity regulated by the board. Under the proposed rules, boards may base a finding that the Law Against Discrimination or other applicable law has been violated on the determination of another court or agency but may also find a violation after independently considering the facts of a case. The proposed rules will further clarify that retaliation or reprisals against individuals for exercising their rights under such laws or under the proposed rules also constitute professional or occupational misconduct.

I have appended the rule amendments I intend to propose. Please advise Deputy Director Howard Pine no later than thirty (30) days after receipt of this letter (and preferably sooner) of any action that your Board intends to take with regard to the anti-discrimination rulemaking described in this letter.



Andrew J. Bruck
Acting Attorney General

SUBCHAPTER 4. ANTI-DISCRIMINATION

N.J.A.C. 13:45C-4.1 Applicability and definitions

(a) This subchapter shall apply to all persons licensed, certified, registered or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a profession or occupation.

(b) The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Board” means any professional or occupational licensing board, committee or subunit of a board or committee within the Division.

“Director” means the Director of the Division of Consumer Affairs.

“Division” means the Division of Consumer Affairs.

“Engage in a reprisal” means to, in any way that has a direct or substantial relationship to the activity regulated by the board,

1) take any retaliatory action against a person because that person has, with respect to rights afforded, or practices or acts prohibited, under the New Jersey Law Against Discrimination, N.J.S.A 10:5.1 et seq. (the “NJLAD”), or any other applicable federal or state civil rights or anti-discrimination law,

- i) opposed any prohibited practices or acts;
- ii) sought legal advice;
- iii) shared relevant information with legal counsel;
- iv) shared information with a governmental entity; or
- v) filed a complaint, testified or assisted in any proceeding; or

2) coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of that person's rights under the NJLAD or any other applicable federal or state civil rights or anti-discrimination law; or

3) coerce, intimidate or threaten any person on account of that person's having aided or encouraged any other person in the other person's exercise or enjoyment of rights under the NJLAD or any other applicable federal or state civil rights or anti-discrimination law.

"Engage in prohibited discrimination" means to engage in conduct that has a direct or substantial relationship to the activity regulated by the board and violates the NJLAD or any other applicable federal or state civil rights or anti-discrimination law.

"Licensee" means any licensee, permittee, certificate holder or registrant of any board.

(c) Any terms used but not defined in this subchapter that are defined within N.J.S.A. 10:5-5 shall have the same meanings as delineated within that statute.

13:45C-4.2 Prohibited conduct

(a) A licensee who has been found in an administrative proceeding brought before a board or before the Office of Administrative Law to have engaged in prohibited discrimination against any current or prospective client, patient, student, supervisee, colleague or employee shall be deemed to have engaged in professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e), and may be subject to discipline.

(b) A licensee who has been found by a court or a state or federal agency of competent jurisdiction to have engaged in prohibited discrimination against any current or prospective client, patient, student, supervisee, colleague or employee, shall be deemed to have engaged in professional or

occupational misconduct within the meaning of N.J.S.A. 45:1-21(e), and may be subject to discipline.

13:45C-4.3 Reprisals

(a) A licensee who has been found in an administrative proceeding brought before a board or before the Office of Administrative Law to have engaged in a reprisal against any person shall be deemed to have engaged in professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e), and may be subject to discipline.

(b) A licensee who has been found by a court or a state or federal agency of competent jurisdiction to have engaged in a reprisal shall be deemed to have engaged in professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e), and may be subject to discipline.