

5753

2009-2010 Regular Sessions

I N   S E N A T E

June 3, 2009

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Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to accessing the professional assistance program for impaired professionals

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 6510-b of the education law, as added by chapter  
2     607 of the laws of 1985, subdivision 2 as amended and subdivision 7 as  
3     added by chapter 290 of the laws of 2000, and subdivision 6 as added by  
4     chapter 811 of the laws of 1987, is amended to read as follows:  
5     S 6510-b. Temporary surrender OR OTHER DISPOSITION of licenses during  
6     treatment for drug or alcohol abuse. 1. The license and registration of  
7     a licensee who may be temporarily incapacitated for the active practice  
8     of a profession licensed pursuant to title eight of this chapter, except  
9     professionals licensed pursuant to article one hundred thirty-one or  
10    article one hundred thirty-one-b thereof, and whose alleged incapacity  
11    is the result of a problem of drug or alcohol abuse which has not  
12    resulted in harm to a patient or client, may be voluntarily surrendered  
13    to, OR VOLUNTARILY OFFERED FOR ANY ALTERNATIVE DISPOSITION WITH, the  
14    department, which may accept and hold such license OR MAKE ANY OTHER  
15    DISPOSITION REGARDING SUCH LICENSE DEEMED APPROPRIATE UNDER THE CIRCUM-  
16    STANCES during the period of such alleged incapacity [or the]. THE  
17    department may accept the surrender of such license after agreement to  
18    conditions to be met prior to the restoration of the license OR THE  
19    DEPARTMENT MAY TREAT THE LICENSE AS NOT SURRENDERED AND MAY IMPOSE  
20    CONDITIONS TO ALLOW THE LICENSEE TO RETAIN THE LICENSE. The department  
21    shall give written notification of such surrender OR OTHER LICENSE  
22    DISPOSITION to the licensing authorities of any other state or country  
23    in which the licensee is authorized to practice. In addition to the  
24    foregoing, the department shall also give written notification of such  
25    surrender OR OTHER LICENSE DISPOSITION, for professionals licensed

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 pursuant to articles one hundred thirty-two, one hundred thirty-three,  
2 one hundred thirty-five, one hundred thirty-seven, one hundred thirty-  
3 nine and one hundred forty-one of this chapter to the commissioner of  
4 health or his designee, and where appropriate to each hospital at which  
5 the professional has privileges, is affiliated, or is employed. The  
6 licensee whose license is so surrendered OR FOR WHICH SOME OTHER DISPO-  
7 SITION OF THE LICENSE HAS BEEN MADE shall notify all persons who request  
8 professional services that he or she has temporarily withdrawn from the  
9 practice of the profession IF SUCH TEMPORARY WITHDRAWAL HAS BEEN  
10 REQUIRED OF THE LICENSEE BY THE DEPARTMENT. The department may provide  
11 for similar notification of patients or clients and of other interested  
12 parties, as appropriate under the circumstances of the professional  
13 practice and responsibilities of the licensee. [The] WHERE THE LICENSE  
14 IS TREATED AS SURRENDERED OR WHERE THE DISPOSITION OF THE LICENSE  
15 REQUIRES THE LICENSEE TO OTHERWISE TEMPORARILY WITHDRAW FROM PRACTICE,  
16 THE licensure status of such licensee shall be "inactive" and he or she  
17 shall not be authorized to practice the profession and shall refrain  
18 from practice in this state or in any other state or country. The volun-  
19 tary surrender OR OTHER DISPOSITION OF THE LICENSE shall not be deemed  
20 to be an admission of disability or of professional misconduct, and  
21 shall not be used as evidence of a violation of subdivision three or  
22 four of section sixty-five hundred nine of this chapter, unless the  
23 licensee practices while the license is "inactive"; and any such prac-  
24 tice shall constitute a violation of subdivision eight of said section.  
25 The surrender of a license OR OTHER DISPOSITION OF THE LICENSE under  
26 this subdivision shall not bar any disciplinary action except action  
27 based solely upon the provisions of subdivision three or four of section  
28 sixty-five hundred nine of this chapter, and only if no harm to a  
29 patient has resulted; and shall not bar any civil or criminal action or  
30 proceeding which might be brought without regard to such surrender. A  
31 surrendered license OR A LICENSE WHOSE DISPOSITION HAS OTHERWISE  
32 RESULTED IN THE TEMPORARY WITHDRAWAL OF THE LICENSEE FROM PRACTICE shall  
33 be restored upon a showing to the satisfaction of the department that  
34 the licensee is not incapacitated for the active practice of the profes-  
35 sion, provided that the department may, by order of the commissioner,  
36 impose reasonable conditions on the licensee, if it determines that  
37 because of the nature and extent of the licensee's former incapacity,  
38 such conditions are necessary to protect the health, safety and welfare  
39 of the public. Prompt written notification of such restoration shall be  
40 given to all licensing bodies which were notified of the temporary  
41 surrender OR OTHER DISPOSITION of the license.

42 2. There shall be appointed within the department, by the board of  
43 regents, a committee on drug and alcohol abuse, which shall advise the  
44 board of regents on matters relating to practice by professional licen-  
45 sees with drug or alcohol abuse problems, and which shall administer the  
46 provisions of this section. The board of regents shall determine the  
47 size, composition, and terms of office of such committee, a majority of  
48 the members of which shall be persons with expertise in problems of drug  
49 or alcohol abuse. The committee shall recommend to the board of regents  
50 such rules as are necessary to carry out the purposes of this section,  
51 including but not limited to procedures for the submission of applica-  
52 tions for the surrender of a license OR FOR THE OFFERING OF A LICENSE  
53 FOR SOME ALTERNATIVE DISPOSITION and for the referral of cases for  
54 investigation or prosecution pursuant to section sixty-five hundred ten  
55 of this article if a licensee fails to comply with the conditions of an  
56 approved program of treatment. There shall be an executive secretary

1 appointed by the board of regents to assist the committee. The executive  
2 secretary shall employ, or otherwise retain, the services of a regis-  
3 tered professional nurse with appropriate qualifications in substance  
4 abuse and addiction to assist in the implementation of the program  
5 authorized by section six thousand five hundred ten-c of this article.  
6 Determinations by the committee relating to licensees shall be made by  
7 panels of at least three members of the committee designated by the  
8 executive secretary, who shall also designate a member of the state  
9 board for the licensee's profession as the ex-officio non voting member  
10 of each panel. In the case of a determination relating to a licensed  
11 nurse, at least one panel member must be a registered professional nurse  
12 licensed by the state.

13 3. Application for the surrender of a license OR FOR THE OFFERING OF A  
14 LICENSE FOR SOME ALTERNATIVE DISPOSITION pursuant to this section shall  
15 be submitted to the committee, and shall identify a proposed treatment  
16 or rehabilitation program, and shall include a consent to the release of  
17 all information concerning the licensee's treatment to the committee.  
18 All information concerning an application, other than the fact of the  
19 surrender OR OTHER DISPOSITION of the license and the participation in  
20 the program and the successful completion or failure of or withdrawal  
21 from the program, shall be strictly confidential, and may not be  
22 released by the committee to any person or body without the consent of  
23 the licensee. The immunity from disciplinary action conferred by this  
24 section shall be conditioned upon the approval of the treatment or reha-  
25 bilitation program by the committee and its successful completion by the  
26 applicant and the elimination of the incapacity to practice. Approval of  
27 a treatment or rehabilitation program by the committee shall not consti-  
28 tute a representation as to the probability of success of the program or  
29 any assumption of financial responsibility for its costs.

30 4. The immunity from disciplinary action conferred by this section may  
31 be revoked by the committee upon a finding that the licensee has failed  
32 to successfully complete the program or that the incapacity to practice  
33 has not been eliminated. Such revocation shall be made only after notice  
34 and an opportunity to be heard, but no adjudicatory hearing shall be  
35 required. The matter shall be referred for appropriate proceedings  
36 pursuant to section sixty-five hundred ten of this chapter. The license  
37 must be returned OR ANY OTHER DISPOSITION OF THE LICENSE ANNULLED unless  
38 charges are served pursuant to section sixty-five hundred ten within  
39 thirty days after the revocation of the approval of the special treat-  
40 ment afforded by this section.

41 5. The commissioner is authorized to adopt regulations to carry out  
42 the purposes of this section, including but not limited to the notice of  
43 temporary inactive status to be required in different professions and  
44 practice situations and the measures required upon ANY temporary with-  
45 drawal from practice.

46 6. No individual who serves as a member of a committee whose purpose  
47 is to confront and refer either to treatment or to the department licen-  
48 sees who are thought to be suffering from alcoholism or drug abuse shall  
49 be liable for damages to any person for any action taken by such indi-  
50 vidual provided such action was taken without malice and within the  
51 scope of such individual's function as a member of such committee, and  
52 provided further that such committee has been established by and func-  
53 tions under the auspices of an association or society of professionals  
54 authorized to practice under this title.

55 7. In addition to the provisions of section two thousand eight hundred  
56 three-e of the public health law, any entity licensed pursuant to arti-

1 cles thirty-six, forty and forty-four of the public health law, and any  
2 mental hygiene facilities, and correctional, occupational, school and  
3 college health services shall provide a report to the office of profes-  
4 sional discipline when there is a suspension, restriction, termination,  
5 curtailment or resignation of employment or privileges in any way  
6 related to a licensed nurse that is impaired when the impairment is  
7 alleged to have been caused by a drug-related problem. Any person,  
8 facility, or corporation which makes a report pursuant to this section  
9 in good faith shall have immunity from any liability, civil or criminal,  
10 for having made such a report except where the conduct constitutes  
11 negligence, gross negligence or intentional misconduct. For the purpose  
12 of any proceeding, civil or criminal, the good faith of any person,  
13 facility or corporation required to make a report shall be presumed.  
14 Such presumption may be rebutted by any competent evidence.  
15 S 2. This act shall take effect immediately.