

5753--A

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I N S E N A T E

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Introduced by Sens. KLEIN, HASSELL-THOMPSON, ONORATO -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

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 THIS title [eight of this chapter],
9 except professionals licensed pursuant to article one hundred thirty-one
10 or article one hundred thirty-one-b thereof, and whose alleged incapaciti-
11 ty 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, IF THE DEPARTMENT DETERMINES THE HEALTH AND SAFETY OF THE
17 PUBLIC WILL BE ADEQUATELY PROTECTED THEREBY, during the period of such
18 alleged incapacity [or the]. THE department may accept the surrender of

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

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1 such license after agreement to conditions to be met prior to the resto-
2 ration of the license OR THE DEPARTMENT MAY TREAT THE LICENSE AS NOT
3 SURRENDERED AND MAY IMPOSE CONDITIONS TO ALLOW THE LICENSEE TO RETAIN
4 THE LICENSE. The department shall give written notification of such
5 surrender OR OTHER LICENSE DISPOSITION to the licensing authorities of
6 any other state or country in which the licensee is authorized to prac-
7 tice. In addition to the foregoing, the department shall also give writ-
8 ten notification of such surrender OR OTHER LICENSE DISPOSITION, for
9 professionals licensed pursuant to articles one hundred thirty-two, one
10 hundred thirty-three, one hundred thirty-five, one hundred thirty-seven,
11 one hundred thirty-nine and one hundred forty-one of this [chapter]
12 TITLE to the commissioner of health or his designee, and where appropri-
13 ate to each hospital at which the professional has privileges, is affil-
14 iated, or is employed. The licensee whose license is so surrendered OR
15 FOR WHICH SOME OTHER DISPOSITION OF THE LICENSE HAS BEEN MADE shall
16 notify all persons who request professional services that he or she has
17 temporarily withdrawn from the practice of the profession IF SUCH TEMPO-
18 RARY WITHDRAWAL HAS BEEN REQUIRED OF THE LICENSEE BY THE DEPARTMENT.
19 The department may provide for similar notification of patients or
20 clients and of other interested parties, as appropriate under the
21 circumstances of the professional practice and responsibilities of the
22 licensee. [The] WHERE THE LICENSE IS TREATED AS SURRENDERED OR WHERE THE
23 DISPOSITION OF THE LICENSE REQUIRES THE LICENSEE TO OTHERWISE TEMPORAR-
24 ILY WITHDRAW FROM PRACTICE, THE licensure status of such licensee shall
25 be "inactive" and he or she shall not be authorized to practice the
26 profession and shall refrain from practice in this state or in any other
27 state or country. The voluntary surrender OR OTHER DISPOSITION OF THE
28 LICENSE shall not be deemed to be an admission of disability or of
29 professional misconduct, and shall not be used as evidence of a
30 violation of subdivision three or four of section sixty-five hundred
31 nine of this [chapter] SUBARTICLE, unless the licensee practices while
32 the license is "inactive"; and any such practice shall constitute a
33 violation of subdivision eight of said section. The surrender of a
34 license OR OTHER DISPOSITION OF THE LICENSE under this subdivision shall
35 not bar any disciplinary action except action based solely upon the
36 provisions of subdivision three or four of section sixty-five hundred
37 nine of this [chapter] SUBARTICLE, and only if no harm to a patient has
38 resulted; and shall not bar any civil or criminal action or proceeding
39 which might be brought without regard to such surrender or other dispo-
40 sition. A surrendered license OR A LICENSE WHOSE DISPOSITION HAS OTHER-
41 WISE RESULTED IN THE TEMPORARY WITHDRAWAL OF THE LICENSEE FROM PRACTICE
42 shall be restored upon a showing to the satisfaction of the department
43 that the licensee is not incapacitated for the active practice of the
44 profession, provided that the department may, by order of the commis-
45 sioner, impose reasonable conditions on the licensee, if it determines
46 that because of the nature and extent of the licensee's former incapaci-
47 ty, such conditions are necessary to protect the health, safety and
48 welfare of the public. Prompt written notification of such restoration
49 shall be given to all licensing bodies which were notified of the tempo-
50 rary surrender OR OTHER DISPOSITION of the license.

51 2. There shall be appointed within the department, by the board of
52 regents, a committee on drug and alcohol abuse, which shall advise the
53 board of regents on matters relating to practice by professional licen-
54 sees with drug or alcohol abuse problems, and which shall administer the
55 provisions of this section. The board of regents shall determine the
56 size, composition, and terms of office of such committee, a majority of

1 the members of which shall be persons with expertise in problems of drug
2 or alcohol abuse. The committee shall recommend to the board of regents
3 such rules as are necessary to carry out the purposes of this section,
4 including but not limited to procedures for the submission of applica-
5 tions for the surrender of a license OR FOR THE OFFERING OF A LICENSE
6 FOR SOME ALTERNATIVE DISPOSITION and for the referral of cases for
7 investigation or prosecution pursuant to section sixty-five hundred ten
8 of this [article] SUBARTICLE if a licensee fails to comply with the
9 conditions of an approved program of treatment. There shall be an execu-
10 tive secretary appointed by the board of regents to assist the commit-
11 tee. The executive secretary shall employ, or otherwise retain, the
12 services of a registered professional nurse with appropriate qualifica-
13 tions in substance abuse and addiction to assist in the implementation
14 of the program authorized by section six thousand five hundred ten-c of
15 this [article] SUBARTICLE. Determinations by the committee relating to
16 licensees shall be made by panels of at least three members of the
17 committee designated by the executive secretary, who shall also desig-
18 nate a member of the state board for the licensee's profession as the
19 ex-officio non voting member of each panel. In the case of a determi-
20 nation relating to a licensed nurse, at least one panel member must be a
21 registered professional nurse licensed by the state.

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

39 4. The immunity from disciplinary action conferred by this section may
40 be revoked by the committee upon a finding that the licensee has failed
41 to successfully complete the program or that the incapacity to practice
42 has not been eliminated. Such revocation shall be made only after notice
43 and an opportunity to be heard, but no adjudicatory hearing shall be
44 required. The matter shall be referred for appropriate proceedings
45 pursuant to section sixty-five hundred ten of this [chapter] SUBARTICLE.
46 The license must be returned OR ANY OTHER DISPOSITION OF THE LICENSE
47 ANNULLED unless charges are served pursuant to section sixty-five
48 hundred ten OF THIS SUBARTICLE within thirty days after the revocation
49 of the approval of the special treatment afforded by this section.

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

55 6. No individual who serves as a member of a committee whose purpose
56 is to confront and refer either to treatment or to the department licen-

1 sees who are thought to be suffering from alcoholism or drug abuse shall
2 be liable for damages to any person for any action taken by such indi-
3 vidual provided such action was taken without malice and within the
4 scope of such individual's function as a member of such committee, and
5 provided further that such committee has been established by and func-
6 tions under the auspices of an association or society of professionals
7 authorized to practice under this title.

8 7. In addition to the provisions of section two thousand eight hundred
9 three-e of the public health law, any entity licensed pursuant to arti-
10 cles thirty-six, forty and forty-four of the public health law, and any
11 mental hygiene facilities, and correctional, occupational, school and
12 college health services shall provide a report to the office of profes-
13 sional discipline when there is a suspension, restriction, termination,
14 curtailment or resignation of employment or privileges in any way
15 related to a licensed nurse that is impaired when the impairment is
16 alleged to have been caused by a drug-related problem. Any person,
17 facility, or corporation which makes a report pursuant to this section
18 in good faith shall have immunity from any liability, civil or criminal,
19 for having made such a report except where the conduct constitutes
20 negligence, gross negligence or intentional misconduct. For the purpose
21 of any proceeding, civil or criminal, the good faith of any person,
22 facility or corporation required to make a report shall be presumed.
23 Such presumption may be rebutted by any competent evidence.

24 S 2. This act shall take effect immediately.