

4527

2013-2014 Regular Sessions

I N S E N A T E

April 8, 2013

Introduced by Sen. HANNON -- (at request of the Department of Health) --
read twice and ordered printed, and when printed to be committed to
the Committee on Health

AN ACT to amend the public health law and the education law, in relation
to enforcing compliance with clinical competency exams, simplifying
service of charges, limiting petitions to modify or vacate orders,
profiling requirements of self-insured physicians, modifying physician
and advertising and testimonial standards and to amend the public
health law, in relation to expanding the applicability of penalties
for willful violations of the commissioner of health's orders and
amending chapter 58 of the laws of 2008, relating to reimbursement to
particular provider pharmacies and prescription drug coverage, in
relation to the effectiveness of certain provisions thereof

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

1 Section 1. Subdivision 7 of section 230 of the public health law is
2 amended by adding a new paragraph (d) to read as follows:
3 (D) (I) A COMMITTEE ON PROFESSIONAL CONDUCT, ON NOTICE TO THE LICENSEE
4 AND AFTER AFFORDING THE LICENSEE AND THE OFFICE OF PROFESSIONAL MEDICAL
5 CONDUCT AN OPPORTUNITY TO BE HEARD, SHALL HAVE THE AUTHORITY TO ORDER
6 THE LICENSEE TO COMPLY WITH RECOMMENDED REMEDIATION ARISING FROM THE
7 EXAMINATIONS IN PARAGRAPH (C) OF THIS SUBDIVISION. (II) IF A COMMITTEE
8 ON PROFESSIONAL CONDUCT WHEN CONSIDERING THE RESULTS OF A CLINICAL
9 COMPETENCY EXAMINATION PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION
10 DETERMINES THAT THE LICENSEE IS INCOMPETENT AND THAT THERE IS NO PRACTI-
11 CAL REMEDIATION FOR SUCH INCOMPETENCE, IT MAY REFER THE CASE TO THE
12 DIRECTOR OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT FOR THE DIREC-
13 TOR'S CONSIDERATION OF WHETHER TO PRESENT TO AN INVESTIGATION COMMITTEE
14 PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (A) OF SUBDIVISION TEN OF
15 THIS SECTION FOR ITS CONCURRENCE ON CHARGES PURSUANT TO PARAGRAPH (B) OF

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

LBD09282-03-3

1 SUBDIVISION FIVE OF SECTION SIXTY-FIVE HUNDRED THIRTY OF THE EDUCATION
2 LAW.

3 S 2. Subdivision 5 of section 6530 of the education law, as added by
4 chapter 606 of the laws of 1991, is amended to read as follows:

5 5. (A) Practicing the profession with incompetence on more than one
6 occasion; OR

7 (B) BEING FOUND TO BE INCOMPETENT BY AN EXAMINATION WHICH HAS OCCURRED
8 PURSUANT TO PARAGRAPH (C) OF SUBDIVISION SEVEN OF SECTION TWO HUNDRED
9 THIRTY OF THE PUBLIC HEALTH LAW WHEN THERE IS NO PRACTICAL REMEDIATION
10 FOR SUCH INCOMPETENCE.

11 S 3. Subdivision 15 of section 6530 of the education law, as added by
12 chapter 606 of the laws of 1991, is amended to read as follows:

13 15. (A) Failure to comply with an order issued pursuant to subdivision
14 seven, paragraph (a) of subdivision ten, and subdivision seventeen of
15 section two hundred thirty of the public health law; OR

16 (B) FAILURE TO COMPLY WITH REMEDIATION RECOMMENDATIONS ARISING FROM AN
17 EXAMINATION WHEN AN EXAMINATION HAS OCCURRED PURSUANT TO PARAGRAPH (C)
18 OF SUBDIVISION SEVEN OF SECTION TWO HUNDRED THIRTY OF THE PUBLIC HEALTH
19 LAW, WHEN SUCH COMPLIANCE HAS BEEN ORDERED BY A COMMITTEE ON PROFES-
20 SIONAL CONDUCT PURSUANT TO PARAGRAPH (D) OF SUBDIVISION SEVEN OF SECTION
21 TWO HUNDRED THIRTY OF THE PUBLIC HEALTH LAW.

22 S 4. Subparagraph (i) of paragraph (d) of subdivision 10 of section
23 230 of the public health law, as amended by chapter 477 of the laws of
24 2008, is amended to read as follows:

25 (i) A copy of the charges and the notice of the hearing shall be
26 served BY THE BOARD on the licensee EITHER (A) personally [by the board]
27 at least thirty days before the hearing[. If personal service cannot be
28 made after due diligence and such fact is certified under oath, a copy
29 of the charges and the notice of hearing shall be served]; OR (B) by
30 registered or certified mail to the licensee's [last known] CURRENT
31 RESIDENTIAL OR PRACTICE address [by the board]; MAILED at least
32 [fifteen] THIRTY days before the hearing; OR (C) BY REGISTERED OR CERTI-
33 FIED MAIL TO THE LICENSEE'S CURRENT REGISTRATION ADDRESS PURSUANT TO
34 SECTION SIXTY-FIVE HUNDRED TWO OF THE EDUCATION LAW OR THE LICENSEE'S
35 MOST RECENT MAILING ADDRESS ON FILE WITH THE NEW YORK STATE EDUCATION
36 DEPARTMENT PURSUANT TO THE NOTIFICATION REQUIREMENT SET FORTH IN SUBDI-
37 VISION FIVE OF SUCH SECTION, MAILED AT LEAST FORTY-FIVE DAYS BEFORE THE
38 HEARING; OR (D) BY FIRST CLASS MAIL TO AN ATTORNEY, LICENSED TO PRACTICE
39 IN THE STATE OF NEW YORK, WHO HAS APPEARED ON BEHALF OF THE LICENSEE IN
40 THE MATTER BEFORE THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT MAILED AT
41 LEAST THIRTY DAYS BEFORE THE HEARING.

42 S 5. Paragraph (q) of subdivision 10 of section 230 of the public
43 health law, as added by chapter 477 of the laws of 2008, is amended to
44 read as follows:

45 (q) [At any time subsequent] SUBSEQUENT to the final conclusion of a
46 professional misconduct proceeding against a licensee, whether upon the
47 determination and order of a hearing committee issued pursuant to para-
48 graph (h) of this subdivision or upon the determination and order of the
49 administrative review board issued pursuant to paragraph (d) of subdivi-
50 sion four of section two hundred thirty-c of this title, the licensee
51 may file a petition with the director, requesting vacatur or modifica-
52 tion of the determination and order. IF THE DETERMINATION AND ORDER DID
53 NOT INCLUDE THE PENALTY OF LICENSE REVOCATION, THE PETITION MAY BE FILED
54 AT ANY TIME. IF THE DETERMINATION AND ORDER INCLUDED A SANCTION OF
55 LICENSE REVOCATION, THE PETITION MAY BE FILED AT ANY TIME PRIOR TO SUCH
56 TIME AS THE LICENSEE IS AUTHORIZED, PURSUANT TO SECTION SIXTY-FIVE

1 HUNDRED ELEVEN OF THE EDUCATION LAW, THE RULES OF THE BOARD OF REGENTS
2 AND THE REGULATIONS OF THE COMMISSIONER OF EDUCATION TO SEEK BOARD OF
3 REGENTS RESTORATION OF THE REVOKED LICENSE. The director shall, after
4 reviewing the matter and after consulting with department counsel,
5 determine in the reasonable exercise of his or her discretion whether
6 there is new and material evidence that was not previously available
7 which, had it been available, would likely have led to a different
8 result, or whether circumstances have occurred subsequent to the
9 original determination that warrant a reconsideration of the measure of
10 discipline. Upon determining that such evidence or circumstances exist,
11 the director shall have the authority to join the licensee in an appli-
12 cation to the chairperson of the state board for professional medical
13 conduct to vacate or modify the determination and order, as the director
14 may deem appropriate. Upon the joint application of the licensee and the
15 director, the chairperson shall have the authority to grant or deny such
16 application.

17 S 6. Section 6511 of the education law, as amended by chapter 542 of
18 the laws of 2000, is amended to read as follows:

19 S 6511. Penalties for professional misconduct. The penalties which may
20 be imposed by the board of regents on a present or former licensee found
21 guilty of professional misconduct (under the definitions and proceedings
22 prescribed in sections sixty-five hundred nine and sixty-five hundred
23 ten of this [article] SUBPART) are: (1) censure and reprimand, (2)
24 suspension of license, (a) wholly, for a fixed period of time; (b)
25 partially, until the licensee successfully completes a course of
26 retraining in the area to which the suspension applies; (c) wholly,
27 until the licensee successfully completes a course of therapy or treat-
28 ment prescribed by the regents; (3) revocation of license, (4) annulment
29 of license or registration, (5) limitation on registration or issuance
30 of any further license, (6) a fine not to exceed ten thousand dollars,
31 upon each specification of charges of which the respondent is determined
32 to be guilty, (7) a requirement that a licensee pursue a course of
33 education or training, and (8) a requirement that a licensee perform up
34 to one hundred hours of public service, in a manner and at a time and
35 place as directed by the board. The board of regents may stay such
36 penalties in whole or in part, may place the licensee on probation and
37 may restore a license which has been revoked, provided, in the case of
38 licensees subject to section two hundred thirty of the public health
39 law, notice that the board is considering such restoration is given to
40 the office of professional medical conduct at least thirty days before
41 the date on which such restoration shall be considered. Upon the recom-
42 mendation of the office of professional medical conduct, the board of
43 regents may deny such restoration. IN THE EVENT THAT THE BOARD, WHEN
44 CONSIDERING SUCH RESTORATION, ELECTS TO ACT IN A MANNER INCONSISTENT
45 WITH ANY RECOMMENDATION OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT,
46 THE BOARD SHALL INCLUDE AN EXPLICIT JUSTIFICATION FOR DEPARTING FROM
47 SUCH RECOMMENDATION IN ITS WRITTEN DETERMINATION. Any fine imposed
48 pursuant to this section or pursuant to subdivision two of section
49 sixty-five hundred ten of this [article] SUBPART may be sued for and
50 recovered in the name of the people of the state of New York in an
51 action brought by the attorney general. In such action the findings and
52 determination of the board of regents or of the violations committee
53 shall be admissible evidence and shall be conclusive proof of the
54 violation and the penalty assessed.

55 S 7. Subdivision 3 of section 2995-a of the public health law, as
56 added by chapter 542 of the laws of 2000, is amended to read as follows:

1 3. Each physician who is self-insured for professional medical malp-
2 ractice shall periodically report to the department on forms and in the
3 time and manner required by the commissioner the information specified
4 in paragraph [(f)] (E) of subdivision one of this section, except that
5 the physician shall report the dollar amount (to the extent of the
6 physician's information and belief) for each judgment, award and settle-
7 ment and not a level of significance or context.

8 S 8. Subdivision 27 of section 6530 of the education law, as added by
9 chapter 606 of the laws of 1991, is amended to read as follows:

10 27. Advertising or soliciting for patronage that is not in the public
11 interest. (a) Advertising or soliciting not in the public interest shall
12 include, but not be limited to, advertising or soliciting that: (i) is
13 false, fraudulent, deceptive, OR misleading[, sensational, or flamboy-
14 ant];

15 (ii) represents intimidation or undue pressure;

16 (iii) [uses testimonials;

17 (iv)] guarantees any service;

18 [(v)] (IV) makes any claim relating to professional services or
19 products or the costs or price therefor which cannot be substantiated by
20 the licensee, who shall have the burden of proof;

21 [(vi)] (V) makes claims of professional superiority which cannot be
22 substantiated by the licensee, who shall have the burden of proof; or

23 [(vii)] (VI) offers bonuses or inducements in any form other than a
24 discount or reduction in an established fee or price for a professional
25 service or product.

26 (b) The following shall be deemed appropriate means of informing the
27 public of the availability of professional services: (i) informational
28 advertising not contrary to the foregoing prohibitions; and

29 (ii) the advertising in a newspaper, periodical or professional direc-
30 tory or on radio [or], television, OR THE INTERNET of fixed prices, or a
31 stated range of prices, for specified routine professional services,
32 provided that if there is an additional charge for related services
33 which are an integral part of the overall service being provided by the
34 licensee, the advertisement shall so state, and provided further that
35 the advertisement indicates the period of time for which the advertised
36 prices shall be in effect.

37 (c)(i) All licensees placing advertisements shall maintain, or cause
38 to be maintained, an exact copy of each advertisement, transcript, tape
39 or video tape thereof as appropriate for the medium used, for a period
40 of one year after its last appearance. This copy shall be made avail-
41 able for inspection upon demand of the department of health;

42 (ii) A licensee shall not compensate or give anything of value to rep-
43 resentatives of the press, radio, television or other communications
44 media in anticipation of or in return for professional publicity in a
45 news item[;].

46 (d) [No demonstrations, dramatizations or other portrayals of profes-
47 sional practice shall be permitted in advertising on radio or tele-
48 vision;] TESTIMONIALS, DEMONSTRATIONS, DRAMATIZATIONS, OR OTHER PORTRAY-
49 ALS OF PROFESSIONAL PRACTICE ARE PERMITTED PROVIDED THAT THEY OTHERWISE
50 COMPLY WITH THE LAWS OF PROFESSIONAL MEDICAL CONDUCT AND FURTHER
51 PROVIDED THAT THE FOLLOWING CONDITIONS ARE SATISFIED:

52 (I) THE PATIENT EXPRESSLY AUTHORIZES THE PORTRAYAL IN WRITING;

53 (II) THE APPROPRIATE DISCLOSURE IS INCLUDED TO PREVENT ANY MISLEADING
54 INFORMATION OR IMAGERY AS TO THE IDENTITY OF THE PATIENT;

55 (III) REASONABLE DISCLAIMERS ARE INCLUDED AS TO ANY STATEMENTS MADE OR
56 RESULTS ACHIEVED IN A PARTICULAR MATTER;

1 (IV) THE USE OF FICTIONAL SITUATIONS OR CHARACTERS MAY BE USED IF NO
2 TESTIMONIALS ARE INCLUDED; AND

3 (V) FICTIONAL PATIENT TESTIMONIALS ARE NOT PERMITTED.

4 S 9. Subdivision 2 of section 12-b of the public health law, as
5 amended by section 17 of part A of chapter 58 of the laws of 2008, is
6 amended to read as follows:

7 2. A person who wilfully violates any provision of this chapter, or
8 any regulation lawfully made or established by any public officer or
9 board under authority of this chapter, OR ANY LAWFUL ORDER PRESCRIBED BY
10 THE COMMISSIONER OF HEALTH, the punishment for violating which is not
11 otherwise prescribed by this chapter or any other law, is punishable by
12 imprisonment not exceeding one year, or by a fine not exceeding ten
13 thousand dollars or by both. Effective on and after April first, two
14 thousand eight the comptroller is hereby authorized and directed to
15 deposit amounts collected in excess of two thousand dollars per
16 violation to the patient safety center account to be used for purposes
17 of the patient safety center created by title two of article twenty-
18 nine-D of this chapter.

19 S 10. Section 32 of part A of chapter 58 of the laws of 2008, amend-
20 ing the elder law and other laws relating to reimbursement to particular
21 provider pharmacies and prescription drug coverage, as amended by
22 section 26 of part A of chapter 59 of the laws of 2011, is amended to
23 read as follows:

24 S 32. This act shall take effect immediately and shall be deemed to
25 have been in full force and effect on and after April 1, 2008; provided
26 however, that sections one, six-a, nineteen, twenty, twenty-four, and
27 twenty-five of this act shall take effect July 1, 2008; provided however
28 that sections sixteen[, seventeen] and eighteen of this act shall expire
29 April 1, 2014; provided, however, that the amendments made by section
30 twenty-eight of this act shall take effect on the same date as section 1
31 of chapter 281 of the laws of 2007 takes effect; provided further, that
32 sections twenty-nine, thirty, and thirty-one of this act shall take
33 effect October 1, 2008; provided further, that section twenty-seven of
34 this act shall take effect January 1, 2009; and provided further, that
35 section twenty-seven of this act shall expire and be deemed repealed
36 March 31, 2014; and provided, further, however, that the amendments to
37 subdivision 1 of section 241 of the education law made by section twen-
38 ty-nine of this act shall not affect the expiration of such subdivision
39 and shall be deemed to expire therewith and provided that the amendments
40 to section 272 of the public health law made by section thirty of this
41 act shall not affect the repeal of such section and shall be deemed
42 repealed therewith.

43 S 11. This act shall take effect immediately; provided that sections
44 one, two, three, four, five, six and eight of this act shall take effect
45 on the sixtieth day after this act shall have become a law.