

STATE OF NEW YORK

7671

2023-2024 Regular Sessions

IN ASSEMBLY

June 1, 2023

Introduced by M. of A. FAHY -- read once and referred to the Committee on Higher Education

AN ACT to amend the public health law, in relation to requiring certain health care providers to disclose the fact that the provider is on probation to current and new patients

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 18 of section 230 of the public health law is
2 amended by adding a new paragraph (c) to read as follows:

3 (c) (i) As used in this paragraph:

4 (A) "licensee" means a physician, physician's assistant, or a special-
5 ist's assistant licensed under title eight of the education law who
6 provides direct patient care;

7 (B) "health care representative" means a health care agent designated
8 by an adult pursuant to article twenty-nine-C of this chapter, a health
9 care surrogate selected to make a health care decision on behalf of a
10 patient pursuant to section twenty-nine hundred ninety-four-d of this
11 chapter, a guardian authorized to decide about health care pursuant to
12 article eighty-one of the mental hygiene law, or a guardian appointed
13 pursuant to section seventeen hundred fifty-B of the surrogate's court
14 procedure act; and

15 (C) "health care" means any treatment, service, or procedure to diag-
16 nose or treat an individual's physical or mental condition.

17 (ii) Except as provided by subparagraph (v) of this paragraph, the
18 office of professional misconduct shall require a physician, physician's
19 assistant or specialist's assistant who has been found to have committed
20 misconduct by the office of professional misconduct or found guilty or
21 liable of an offense in a court of law pursuant to subparagraph (iii) of
22 this paragraph to disclose the following to current or new patients or
23 the patient's health care representative on a separate written document:
24 his or her status with the office of professional misconduct or from a

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

LBD01053-06-3

1 court of law; the length and expiration date of any penalties associated
2 with such finding of misconduct; the cause or causes for disciplinary
3 action stated in the order issued by the office of professional miscon-
4 duct or a court of law; all practice restrictions placed on the licensee
5 by the office of professional misconduct or a court of law; the address
6 of the office of professional misconduct's website; and the office of
7 professional misconduct's telephone number. This notice shall be
8 provided prior to the patient's first visit, or prior to the patient
9 receiving health care from the physician, physician's assistant and
10 specialist's assistant following the finding of misconduct by the office
11 of professional misconduct or of guilt or liability by a court of law of
12 an offense in any of the circumstances listed in clause (A), (B), (C) or
13 (D) of subparagraph (iii) of this paragraph. A licensee required to
14 provide a disclosure pursuant to this paragraph shall obtain from the
15 patient, or their health care representative, a separate, signed copy of
16 that disclosure prior to the patient entering the room where the licen-
17 see performs the treatment, service, procedure or other direct health
18 care; or in a hospital, ambulatory care center, or other health care
19 facility prior to the licensee performing any treatment, service, proce-
20 dure or other direct health care.

21 (iii) The physician, physician's assistant or specialist's assistant
22 shall provide the disclosure under the following circumstances:

23 (A) The physician, physician's assistant or specialist's assistant has
24 been found to have committed misconduct by the office of professional
25 misconduct or found liable or guilty by a court of law after a determi-
26 nation or stipulated settlement in of any of the following offenses:

27 (1) the commission of any act of sexual abuse, misconduct, exploita-
28 tion, or relations with a patient or client as defined in article one
29 hundred thirty, article two hundred thirty, or article two hundred
30 sixty-three of the penal law;

31 (2) drug or alcohol abuse directly resulting in harm to patients or
32 the extent that such use impairs the ability of the individual to prac-
33 tice safely;

34 (3) criminal conviction directly involving harm to patient health; or
35 (4) inappropriate prescribing resulting in harm to patients and a
36 probationary period of five years or more.

37 (B) The office of professional misconduct or a court of law ordered
38 any of the following regardless if the individual has been placed on
39 probation:

40 (1) a third-party chaperone shall be present when the individual exam-
41 ines patients as a result of sexual misconduct; or

42 (2) the individual shall submit to drug testing as a result of
43 substance abuse.

44 (C) The individual has not successfully completed a training program
45 or any associated examinations required by the office of professional
46 misconduct or a court of law as a condition of probation.

47 (D) The individual has been on probation for any offense more than
48 three times.

49 (iv) The individual shall obtain from each patient, or their health
50 care representative, a signed copy of the disclosure following the
51 disclosure described in subparagraph (iii) of this paragraph that
52 includes a written explanation of how the patient can find further
53 information on the licensee's actions on the office of professional
54 misconduct enforcement actions' website.

55 (v) The individual shall not be required to provide the disclosure
56 prior to performing any treatment, service, procedure, or other direct

1 health care as required by subdivision three of this section, if in the
2 health care professional's judgment, an emergency exists and the person
3 is in immediate need of medical attention, and an attempt to secure
4 consent would result in delay of treatment which would increase the risk
5 to such person's life or health, or if the patient is incapacitated and
6 the patient's health care representative is not reasonably available.

7 (vi) Should a patient, or their health care representative, elect to
8 cancel the patient's appointment, treatment, service, procedure, or
9 other direct health care with the individual upon being provided with
10 the disclosure required by subparagraph (iii) of this paragraph, neither
11 the patient nor the patient's insurance company shall be charged for the
12 appointment.

13 (vii) Any physician, physician's assistant or specialist's assistant
14 who violates the provisions of this paragraph shall be subject to a
15 penalty not to exceed two thousand dollars. Any individual who commits
16 subsequent, willful violations of the provisions of this paragraph shall
17 have his or her license suspended for a period of time to be determined
18 by the office of professional misconduct.

19 (viii) The commissioner shall promulgate regulations to implement the
20 requirements of this paragraph, and shall issue forms set forth that
21 shall be used to satisfy the written requirement specified in this para-
22 graph which shall also include:

23 (A) provisions that address a health care facility's responsibility to
24 ensure the patient receives care from an appropriate individual or to
25 transfer the patient if the patient refuses care from the individual
26 that has been found to have committed misconduct or has been found to be
27 liable or guilty of an offense by a court of law pursuant to subpara-
28 graph (iii) of this paragraph and another individual is not available at
29 the health care facility to provide care; and

30 (B) provisions related to enforcing of the requirements of this para-
31 graph.

32 § 2. This act shall take effect January 1, 2024 and shall apply to all
33 probationary orders issued on or after such effective date. Effective
34 immediately, the addition, amendment and/or repeal of any rule or regu-
35 lation necessary for the implementation of this act on its effective
36 date are authorized to be made and completed on or before such effective
37 date.