S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

June 3, 2009

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:

Section 1. Section 6510-b of the education law, as added by chapter 607 of the laws of 1985, subdivision 2 as amended and subdivision 7 as added by chapter 290 of the laws of 2000, and subdivision 6 as added by chapter 811 of the laws of 1987, is amended to read as follows:

S 6510-b. Temporary surrender OR OTHER DISPOSITION of licenses during treatment for drug or alcohol abuse. 1. The license and registration of a licensee who may be temporarily incapacitated for the active practice of a profession licensed pursuant to THIS title [eight of this chapter], except professionals licensed pursuant to article one hundred thirty-one or article one hundred thirty-one-b thereof, and whose alleged incapacity is the result of a problem of drug or alcohol abuse which has not resulted in harm to a patient or client, may be voluntarily surrendered to, OR VOLUNTARILY OFFERED FOR ANY ALTERNATIVE DISPOSITION WITH, the department, which may accept and hold such license OR MAKE ANY OTHER DISPOSITION REGARDING SUCH LICENSE DEEMED APPROPRIATE UNDER THE CIRCUMSTANCES, IF THE DEPARTMENT DETERMINES THE HEALTH AND SAFETY OF THE PUBLIC WILL BE ADEQUATELY PROTECTED THEREBY, during the period of such 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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such license after agreement to conditions to be met prior to the restoration of the license OR THE DEPARTMENT MAY TREAT THE LICENSE AS NOT SURRENDERED AND MAY IMPOSE CONDITIONS TO ALLOW THE LICENSEE TO RETAIN THE LICENSE. The department shall give written notification of such surrender OR OTHER LICENSE DISPOSITION to the licensing authorities of any other state or country in which the licensee is authorized to practice. In addition to the foregoing, the department shall also give written notification of such surrender OR OTHER LICENSE DISPOSITION, for professionals licensed pursuant to articles one hundred thirty-two, one hundred thirty-three, one hundred thirty-five, one hundred thirty-seven, one hundred thirty-nine and one hundred forty-one of this [chapter] TITLE to the commissioner of health or his designee, and where appropriate to each hospital at which the professional has privileges, is affiliated, or is employed. The licensee whose license is so surrendered OR FOR WHICH SOME OTHER DISPOSITION OF THE LICENSE HAS BEEN MADE shall notify all persons who request professional services that he or she has temporarily withdrawn from the practice of the profession IF SUCH TEMPORARY WITHDRAWAL HAS BEEN REQUIRED OF THE LICENSEE BY THE DEPARTMENT. The department may provide for similar notification of patients or clients and of other interested parties, as appropriate under the circumstances of the professional practice and responsibilities of the licensee. [The] WHERE THE LICENSE IS TREATED AS SURRENDERED OR WHERE THE DISPOSITION OF THE LICENSE REQUIRES THE LICENSEE TO OTHERWISE TEMPORARILY WITHDRAW FROM PRACTICE, THE licensure status of such licensee shall be "inactive" and he or she shall not be authorized to practice the profession and shall refrain from practice in this state or in any other state or country. The voluntary surrender OR OTHER DISPOSITION OF THE LICENSE shall not be deemed to be an admission of disability or of professional misconduct, and shall not be used as evidence of a violation of subdivision three or four of section sixty-five hundred nine of this [chapter] SUBARTICLE, unless the licensee practices while the license is "inactive"; and any such practice shall constitute a violation of subdivision eight of said section. The surrender of a license OR OTHER DISPOSITION OF THE LICENSE under this subdivision shall not bar any disciplinary action except action based solely upon the provisions of subdivision three or four of section sixty-five hundred nine of this [chapter] SUBARTICLE, and only if no harm to a patient has resulted; and shall not bar any civil or criminal action or proceeding which might be brought without regard to such surrender or other disposition. A surrendered license OR A LICENSE WHOSE DISPOSITION HAS OTHERWISE RESULTED IN THE TEMPORARY WITHDRAWAL OF THE LICENSEE FROM PRACTICE shall be restored upon a showing to the satisfaction of the department that the licensee is not incapacitated for the active practice of the profession, provided that the department may, by order of the commissioner, impose reasonable conditions on the licensee, if it determines that because of the nature and extent of the licensee's former incapacity, such conditions are necessary to protect the health, safety and welfare of the public. Prompt written notification of such restoration shall be given to all licensing bodies which were notified of the temporary surrender OR OTHER DISPOSITION of the license.

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

the members of which shall be persons with expertise in problems of drug or alcohol abuse. The committee shall recommend to the board of regents such rules as are necessary to carry out the purposes of this section, including but not limited to procedures for the submission of applications for the surrender of a license OR FOR THE OFFERING OF A LICENSE FOR SOME ALTERNATIVE DISPOSITION and for the referral of cases for investigation or prosecution pursuant to section sixty-five hundred ten of this [article] SUBARTICLE if a licensee fails to comply with the conditions of an approved program of treatment. There shall be an executive secretary appointed by the board of regents to assist the committee. The executive secretary shall employ, or otherwise retain, the services of a registered professional nurse with appropriate qualifications in substance abuse and addiction to assist in the implementation of the program authorized by section six thousand five hundred ten-c of this [article] SUBARTICLE. Determinations by the committee relating to licensees shall be made by panels of at least three members of the committee designated by the executive secretary, who shall also designate a member of the state board for the licensee's profession as the ex-officio non voting member of each panel. In the case of a determination relating to a licensed nurse, at least one panel member must be a registered professional nurse licensed by the state.

3. Application for the surrender of a license OR FOR THE OFFERING OF A LICENSE FOR SOME ALTERNATIVE DISPOSITION pursuant to this section shall be submitted to the committee, and shall identify a proposed treatment or rehabilitation program, and shall include a consent to the release of all information concerning the licensee's treatment to the committee. All information concerning an application, other than the fact of the surrender OR OTHER DISPOSITION of the license and the participation in the program and the successful completion or failure of or withdrawal from the program, shall be strictly confidential, and may not be released by the committee to any person or body without the consent of the licensee. The immunity from disciplinary action conferred by this section shall be conditioned upon the approval of the treatment or rehabilitation program by the committee and its successful completion by the applicant and the elimination of the incapacity to practice. Approval of a treatment or rehabilitation program by the committee shall not constitute a representation as to the probability of success of the program or any assumption of financial responsibility for its costs.

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

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

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

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

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

S 2. This act shall take effect immediately.