

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

2054

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the education law, in relation to establishing a physician recredentialing program and requiring all physicians to carry malpractice insurance

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

Section 1. The executive law is amended by adding a new article 38 to read as follows:

ARTICLE 38

NEW YORK STATE BOARD FOR RECREDENTIALING
OF SELECTED PHYSICIAN SPECIALTIES

SECTION 866. NEW YORK STATE BOARD FOR RECREDENTIALING OF SELECTED PHYSICIAN SPECIALTIES.

867. POWERS AND DUTIES OF THE BOARD.

868. REMEDIAL TRAINING PROGRAMS.

869. JUDICIAL REVIEW.

S 866. NEW YORK STATE BOARD FOR RECREDENTIALING OF SELECTED PHYSICIAN SPECIALTIES. 1. THERE IS HEREBY CREATED IN THE EXECUTIVE DEPARTMENT THE NEW YORK STATE BOARD FOR RECREDENTIALING OF SELECTED PHYSICIAN SPECIALTIES. THE BOARD SHALL CONSIST OF THE COMMISSIONERS OF HEALTH AND EDUCATION AND FIVE OTHER MEMBERS TO BE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE. THE FIVE APPOINTED MEMBERS OF THE BOARD SHALL CONSIST OF TWO PHYSICIANS BOARD CERTIFIED IN OBSTETRICS-GYNECOLOGY, A PHYSICIAN BOARD CERTIFIED IN ANESTHESIOLOGY, A PHYSICIAN BOARD CERTIFIED IN PEDIATRICS AND ONE MEMBER APPOINTED TO REPRESENT THE INTERESTS OF THE GENERAL PUBLIC. THE TERM OF OFFICE OF EACH APPOINTED MEMBER SHALL BE THREE YEARS. ANY MEMBER APPOINTED TO FILL A VACANCY OCCURRING OTHERWISE THAN BY EXPIRATION OF A TERM SHALL BE APPOINTED FOR THE REMAINDER OF THE UNEXPIRED TERM.

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

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2. THE CHAIRPERSON SHALL BE APPOINTED FROM THE MEMBERSHIP BY THE GOVERNOR AND SHALL HOLD OFFICE AT THE PLEASURE OF THE GOVERNOR. THE FIVE APPOINTED MEMBERS SHALL BE ENTITLED TO RECEIVE REIMBURSEMENT FOR EXPENSES ACTUALLY AND NECESSARILY INCURRED IN THE PERFORMANCE OF ALL DUTIES.

3. THE COMMISSIONER OF HEALTH AND THE COMMISSIONER OF EDUCATION MAY, BY OFFICIAL AUTHORITY FILED IN THEIR RESPECTIVE AGENCIES AND WITH THE BOARD, DESIGNATE A DEPUTY OR OTHER OFFICER TO EXERCISE ANY POWER OR PERFORM ANY DUTY, INCLUDING THE RIGHT TO VOTE, ON THE BOARD.

4. NO CIVIL ACTION SHALL BE BROUGHT IN ANY COURT AGAINST ANY MEMBER OF THE BOARD FOR ANY ACT DONE, FAILURE TO ACT, OR STATEMENT OR OPINION MADE, WITHIN THE SCOPE OF HIS OR HER DUTIES AS A MEMBER OF THE BOARD.

S 867. POWERS AND DUTIES OF THE BOARD. THE BOARD FOR RECREDENTIALING OF SELECTED PHYSICIAN SPECIALTIES SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS AND DUTIES:

1. TO RECREDENTIAL ALL LICENSED PHYSICIANS WHO PRACTICE OBSTETRICS, GYNECOLOGY, ANESTHESIOLOGY OR PEDIATRICS;

2. TO DEVELOP MECHANISMS FOR RECREDENTIALING, INCLUDING AS APPROPRIATE, SPECIALTY BOARD CERTIFICATION AND HOSPITAL PEER REVIEW PROCESSES;

3. TO MAKE AND EXECUTE CONTRACTS AND ALL OTHER INSTRUMENTS NECESSARY AND CONVENIENT FOR THE EXERCISE OF ITS POWERS AND FUNCTIONS UNDER THIS ARTICLE;

4. TO APPOINT AN EXECUTIVE OFFICER, OFFICERS, AGENTS, EMPLOYEES AND PRESCRIBE THEIR DUTIES AND QUALIFICATIONS;

5. TO HOLD HEARINGS AND SUBPOENA WITNESSES IN THE EXERCISE OF ITS POWERS, FUNCTIONS AND DUTIES;

6. TO CONTRACT FOR PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE;

7. TO CONTRACT FOR AND TO ACCEPT ANY ASSISTANCE, INCLUDING BUT NOT LIMITED TO GIFTS, GRANTS, LOANS OF FUNDS OR OF PROPERTY FROM THE FEDERAL GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF, OR FROM ANY AGENCY OR INSTRUMENTALITY OF THE STATE, OR FROM ANY OTHER PUBLIC OR PRIVATE SOURCE;

8. TO GRANT, AS APPROPRIATE, TIME-LIMITED CERTIFICATIONS OF RECREDENTIALING; AND

9. TO ADOPT, AMEND, OR REPEAL SUCH RULES AND REGULATIONS AS IT DEEMS NECESSARY TO ADMINISTER THIS ARTICLE.

S 868. REMEDIAL TRAINING PROGRAMS. 1. PHYSICIANS DETERMINED BY THE BOARD NOT TO QUALIFY FOR RECREDENTIALING SHALL BE REFERRED TO THE STATE BOARD OF REGENTS. THE STATE BOARD OF REGENTS MAY GRANT TIME-LIMITED PERMITS TO ALLOW FOR A PERIOD OF REMEDIAL TRAINING.

2. DURING THE TERM OF THE LIMITED PERMIT, THE PHYSICIAN SHALL ENGAGE IN A REMEDIAL TRAINING PROGRAM DETERMINED BY THE BOARD.

3. IN THE EVENT THAT A PHYSICIAN FAILS TO COMPLETE THE REMEDIAL TRAINING PROGRAM OR TO SATISFY THE BOARD THAT THE PHYSICIAN MEETS ITS STANDARDS FOR RECREDENTIALING, THE BOARD WILL REFER THE MATTER TO THE DEPARTMENT OF HEALTH FOR CONSIDERATION OF ACTION REGARDING THE PHYSICIAN'S LICENSE TO PRACTICE MEDICINE.

S 869. JUDICIAL REVIEW. A DECISION BY THE BOARD SHALL BE SUBJECT TO JUDICIAL REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 2. The education law is amended by adding a new section 6524-a to read as follows:

S 6524-A. RECREDENTIALING OF LICENSED PHYSICIANS. 1. COMMENCING JUNE FIRST, TWO THOUSAND ELEVEN, NO PHYSICIAN LESS THAN SEVENTY YEARS OF AGE MAY PRACTICE OBSTETRICS, GYNECOLOGY, ANESTHESIOLOGY OR PEDIATRICS UNLESS, WITHIN THE PAST NINE YEARS, THE NEW YORK STATE BOARD FOR RECRE-

1 DENTIALING OF SELECTED PHYSICIAN SPECIALTIES HAS CERTIFIED THAT THE
2 PHYSICIAN HAS MET THE REQUIREMENTS OF ARTICLE THIRTY-EIGHT OF THE EXECU-
3 TIVE LAW.

4 2. COMMENCING JUNE FIRST, TWO THOUSAND ELEVEN, NOTWITHSTANDING SECTION
5 TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW, NO PHYSICIAN SEVENTY YEARS
6 OF AGE OR OLDER MAY PRACTICE OBSTETRICS, GYNECOLOGY, ANESTHESIOLOGY OR
7 PEDIATRICS UNLESS, WITHIN THE PAST THREE YEARS, THE NEW YORK STATE BOARD
8 FOR RECREDENTIALING OF SELECTED PHYSICIAN SPECIALTIES HAS CERTIFIED THAT
9 THE PHYSICIAN HAS MET THE REQUIREMENTS OF ARTICLE THIRTY-EIGHT OF THE
10 EXECUTIVE LAW.

11 3. COMMENCING JUNE FIRST, TWO THOUSAND ELEVEN, NOTWITHSTANDING SUBDI-
12 VISIONS ONE AND TWO OF THIS SECTION, A PHYSICIAN WHO HAS NOT BEEN REGIS-
13 TERED TO PRACTICE MEDICINE IN THE IMMEDIATE PRIOR BIENNIAL REGISTRATION
14 PERIOD OR WHO HAS NOT ACTIVELY ENGAGED IN THE PRACTICE OF MEDICINE FOR A
15 PERIOD EXCEEDING TWO YEARS MAY NOT PRACTICE OBSTETRICS, GYNECOLOGY,
16 ANESTHESIOLOGY OR PEDIATRICS UNLESS THE NEW YORK STATE BOARD FOR RECRE-
17 DENTIALING OF SELECTED PHYSICIAN SPECIALTIES HAS CERTIFIED THAT THE
18 PHYSICIAN HAS MET THE REQUIREMENTS OF ARTICLE THIRTY-EIGHT OF THE EXECU-
19 TIVE LAW.

20 S 3. Subdivision 1 of section 6525 of the education law is amended by
21 adding a new paragraph 4 to read as follows:

22 (4) A PHYSICIAN WHO IS REQUIRED TO SATISFY A REMEDIAL TRAINING PROGRAM
23 REQUIRED BY THE NEW YORK STATE BOARD FOR RECREDENTIALING OF SELECTED
24 PHYSICIAN SPECIALTIES.

25 S 4. The education law is amended by adding a new section 6527-a to
26 read as follows:

27 S 6527-A. MALPRACTICE INSURANCE REQUIRED. 1. EVERY PHYSICIAN LICENSED
28 TO PRACTICE MEDICINE IN THIS STATE SHALL OBTAIN AND MAINTAIN MEDICAL
29 MALPRACTICE INSURANCE AS DEFINED IN SECTION FIVE THOUSAND FIVE HUNDRED
30 ONE OF THE INSURANCE LAW.

31 2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION:

32 A. LICENSED PHYSICIANS WHOSE PRACTICE IS LIMITED TO INSTRUCTION AND/OR
33 RESEARCH AND

34 B. THOSE PERSONS PERMITTED LIMITED PRACTICE WITHOUT A LICENSE PURSUANT
35 TO SECTION SIXTY-FIVE HUNDRED TWENTY-SIX OF THIS ARTICLE, SHALL BE
36 EXEMPT FROM THE PROVISIONS OF THIS SECTION.

37 S 5. Section 6528 of the education law is amended by adding a new
38 subdivision (f) to read as follows:

39 (F) WHERE REQUIRED BY SECTION SIXTY-FIVE HUNDRED TWENTY-FOUR-A OF THIS
40 ARTICLE, APPLICANTS MUST SATISFY THE REQUIREMENTS FOR CERTIFICATION BY
41 THE NEW YORK STATE BOARD FOR RECREDENTIALING OF SELECTED PHYSICIAN
42 SPECIALTIES PURSUANT TO ARTICLE THIRTY-EIGHT OF THE EXECUTIVE LAW.

43 S 6. This act shall take effect June 1, 2011 provided, however, that
44 any rules or regulations necessary to implement the provisions of this
45 act shall be promulgated prior to such date.