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2011-2012 Regular Sessions

I N A S S E M B L Y

March 2, 2011

Introduced by M. of A. GOTTFRIED, CAHILL, J. RIVERA, SCHIMEL, GLICK, CLARK, MILLMAN, ROBINSON, JEFFRIES, PAULIN, HOOPER, KELLNER, JAFFEE, REILLY, BARRON, LIFTON, COOK, LANCMAN, PERRY, ENGLEBRIGHT, O'DONNELL, ARROYO, MARKEY, TITONE, P. RIVERA, J. MILLER, ROSENTHAL, KAVANAGH, STEVENSON, HEVESI -- Multi-Sponsored by -- M. of A. BOYLE, BRENNAN, BRONSON, DINOWITZ, FARRELL, GALEF, GIBSON, HEASTIE, LUPARDO, McENENY, MENG, NOLAN, PEOPLES-STOKES, PRETLOW, SCARBOROUGH, SWEENEY, WEISENBERG, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, the education law and the labor law, in relation to prohibiting participation in torture and improper treatment of prisoners by health care professionals

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

1 Section 1. Legislative policy and intent. This legislation is based  
2 on, and is intended to give effect to, international treaties and stand-  
3 ards; federal, state and local law; and professional standards relating  
4 to torture, improper treatment of prisoners, and related matters. It is  
5 guided by two basic principles: (1) health care professionals shall be  
6 dedicated to providing the highest standard of health care, with  
7 compassion and respect for human dignity and rights; and (2) torture and  
8 improper treatment of prisoners are wrong and inconsistent with the  
9 practice of the health care professions. The legislature finds that the  
10 conduct prohibited by this act violates the ethical and legal obli-  
11 gations of licensed health care professionals. This legislation will  
12 further protect the professionalism of New York state licensed health  
13 care professionals by authorizing and obligating them to refuse to  
14 participate in torture and improper treatment of prisoners, which in

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

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1 turn will protect the life and health of the people of the state and  
2 those with whom New York licensed health care professionals interact. A  
3 health care professional who comes to the aid of a prisoner should not  
4 be presumed to be in violation when she or he is fulfilling the ethical  
5 principle of beneficence. In contrast, a health care professional who,  
6 for example, attends to a prisoner in order to allow torture or improper  
7 treatment to commence or continue is not acting beneficently. Such  
8 practices are inconsistent with professional ethics and standards and  
9 are violations of this legislation. The legislature is mindful that  
10 ordinarily there are limits on New York state's jurisdiction relating to  
11 conduct outside the state or under federal authority. However, it is  
12 proper for the state to regulate health care professional licensure in  
13 relation to a professional's conduct, even where the conduct occurs  
14 outside the state; certain wrongful out-of-state conduct is already  
15 grounds for professional discipline. Therefore, it is the legislature's  
16 intent that this legislation be applied to the fullest extent possible.

17 S 2. The public health law is amended by adding a new section 23 to  
18 read as follows:

19 S 23. PARTICIPATION IN TORTURE OR IMPROPER TREATMENT OF PRISONERS BY  
20 HEALTH CARE PROFESSIONALS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE  
21 TERMS "TORTURE" AND "IMPROPER TREATMENT" SHALL BE INTERPRETED IN ACCORD-  
22 ANCE WITH APPLICABLE LAW, INCLUDING INTERNATIONAL TREATIES TO WHICH THE  
23 UNITED STATES IS A PARTY. HOWEVER, FOR THE PURPOSES OF THIS SECTION, IT  
24 SHALL NOT BE AN ELEMENT OF EITHER "TORTURE" OR "IMPROPER TREATMENT" THAT  
25 SUCH ACTS BE COMMITTED BY A GOVERNMENT OR NON-GOVERNMENT ACTOR, ENTITY,  
26 OR OFFICIAL; UNDER COLOR OF LAW; OR NOT UNDER COLOR OF LAW. AS USED IN  
27 THIS SECTION, UNLESS THE CONTEXT CLEARLY REQUIRES OTHERWISE, THE FOLLOW-  
28 ING TERMS HAVE THE FOLLOWING MEANINGS:

29 (A) "HEALTH CARE PROFESSIONAL" MEANS ANY PERSON LICENSED, REGISTERED,  
30 CERTIFIED, OR EXEMPT TO PRACTICE UNDER (I) ANY OF THE FOLLOWING ARTICLES  
31 OF THE EDUCATION LAW: ONE HUNDRED THIRTY-ONE (MEDICINE), ONE HUNDRED  
32 THIRTY-ONE-B (PHYSICIAN ASSISTANTS AND SPECIALIST ASSISTANTS), ONE  
33 HUNDRED THIRTY-TWO (CHIROPRACTIC), ONE HUNDRED THIRTY-THREE (DENTISTRY  
34 AND DENTAL HYGIENE), ONE HUNDRED THIRTY-SIX (PHYSICAL THERAPY AND PHYS-  
35 ICAL THERAPIST ASSISTANTS), ONE HUNDRED THIRTY-SEVEN (PHARMACY), ONE  
36 HUNDRED THIRTY-NINE (NURSING), ONE HUNDRED FORTY (PROFESSIONAL MIDWIFERY  
37 PRACTICE ACT), ONE HUNDRED FORTY-ONE (PODIATRY), ONE HUNDRED FORTY-THREE  
38 (OPTOMETRY), ONE HUNDRED FORTY-FOUR (OPHTHALMIC DISPENSING), ONE HUNDRED  
39 FIFTY-THREE (PSYCHOLOGY), ONE HUNDRED FIFTY-FOUR (SOCIAL WORK), ONE  
40 HUNDRED FIFTY-FIVE (MASSAGE THERAPY), ONE HUNDRED FIFTY-SIX (OCCUPA-  
41 TIONAL THERAPY), ONE HUNDRED FIFTY-SEVEN (DIETETICS AND NUTRITION), ONE  
42 HUNDRED FIFTY-NINE (SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS), ONE  
43 HUNDRED SIXTY (ACUPUNCTURE), ONE HUNDRED SIXTY-THREE (MENTAL HEALTH  
44 PRACTITIONERS), ONE HUNDRED SIXTY-FOUR (RESPIRATORY THERAPISTS AND  
45 RESPIRATORY THERAPY TECHNICIANS), ONE HUNDRED SIXTY-FIVE (CLINICAL LABO-  
46 RATORY TECHNOLOGY PRACTICE ACT), OR ONE HUNDRED SIXTY-SIX (MEDICAL PHYS-  
47 ICS PRACTICE), OR (II) ARTICLE THIRTY-FIVE OF THIS CHAPTER (PRACTICE OF  
48 RADIOLOGIC TECHNOLOGY).

49 (B) "TORTURE" MEANS ANY INTENTIONAL ACT OR INTENTIONAL OMISSION BY  
50 WHICH SEVERE PAIN OR SUFFERING, WHETHER PHYSICAL OR MENTAL, IS INFLICTED  
51 ON A PERSON FOR SUCH PURPOSES AS OBTAINING FROM THE PERSON OR FROM A  
52 THIRD PERSON INFORMATION OR A CONFESSION, PUNISHING THE PERSON FOR AN  
53 ACT THE PERSON OR A THIRD PERSON HAS COMMITTED (INCLUDING THE HOLDING OF  
54 A BELIEF OR MEMBERSHIP IN ANY GROUP) OR IS SUSPECTED OF HAVING COMMIT-  
55 TED, OR INTIMIDATING OR COERCING THE PERSON OR A THIRD PERSON, OR FOR  
56 ANY REASON BASED ON DISCRIMINATION OF ANY KIND. IT DOES NOT INCLUDE

1 PAIN OR SUFFERING ARISING ONLY FROM, INHERENT IN OR INCIDENTAL TO LAWFUL  
2 SANCTION.

3 (C) "IMPROPER TREATMENT" MEANS (I) CRUEL, INHUMAN OR DEGRADING, TREAT-  
4 MENT OR PUNISHMENT AS DEFINED BY APPLICABLE INTERNATIONAL TREATIES AND  
5 THEIR CORRESPONDING INTERPRETING BODIES; OR CRUEL AND UNUSUAL PUNISHMENT  
6 AS DEFINED IN THE UNITED STATES CONSTITUTION OR THE NEW YORK STATE  
7 CONSTITUTION; OR (II) ANY VIOLATION OF SUBDIVISION THREE OR FOUR OF THIS  
8 SECTION.

9 (D) "PRISONER" MEANS ANY PERSON WHO IS SUBJECT TO PUNISHMENT,  
10 DETENTION, INCARCERATION, INTERROGATION, INTIMIDATION OR COERCION,  
11 REGARDLESS OF WHETHER SUCH ACTION IS PERFORMED OR COMMITTED BY A GOVERN-  
12 MENT OR NON-GOVERNMENT ACTOR, ENTITY, OR OFFICIAL; UNDER COLOR OF LAW;  
13 OR NOT UNDER COLOR OF LAW.

14 (E) TO "ADVERSELY AFFECT" A PERSON'S PHYSICAL OR MENTAL HEALTH OR  
15 CONDITION DOES NOT INCLUDE CAUSING ADVERSE EFFECTS THAT MAY ARISE FROM  
16 TREATMENT OR CARE WHEN THAT TREATMENT OR CARE IS PERFORMED IN ACCORDANCE  
17 WITH GENERALLY APPLICABLE LEGAL, HEALTH AND PROFESSIONAL STANDARDS AND  
18 FOR THE PURPOSES OF EVALUATING, TREATING, PROTECTING OR IMPROVING THE  
19 PERSON'S HEALTH.

20 (F) "INTERROGATION" MEANS THE QUESTIONING RELATED TO LAW ENFORCEMENT,  
21 THE ENFORCEMENT OF RULES OR REGULATIONS OF AN INSTITUTION IN WHICH  
22 PEOPLE ARE DETAINED THROUGH THE CRIMINAL JUSTICE SYSTEM OR FOR MILITARY  
23 OR NATIONAL SECURITY REASONS (SUCH AS A JAIL OR OTHER DETENTION FACILI-  
24 TY, POLICE FACILITY, PRISON, IMMIGRATION FACILITY, OR MILITARY FACILITY)  
25 OR TO MILITARY AND NATIONAL SECURITY INTELLIGENCE GATHERING, WHETHER BY  
26 A GOVERNMENT OR NON-GOVERNMENT ACTOR, ENTITY OR OFFICIAL. "INTERRO-  
27 GATION" SHALL ALSO INCLUDE QUESTIONING TO AID OR ACCOMPLISH ANY ILLEGAL  
28 ACTIVITY OR PURPOSE, WHETHER BY A GOVERNMENT OR NON-GOVERNMENT ACTOR,  
29 ENTITY OR OFFICIAL. INTERROGATIONS ARE DISTINCT FROM QUESTIONING USED BY  
30 HEALTH CARE PROFESSIONALS TO ASSESS THE PHYSICAL OR MENTAL CONDITION OF  
31 AN INDIVIDUAL.

32 2. KNOWLEDGE. IT SHALL BE AN ELEMENT OF ANY VIOLATION OF THIS SECTION  
33 THAT THE ACTOR KNEW OR REASONABLY SHOULD HAVE KNOWN THAT HIS OR HER  
34 CONDUCT IS OF THE KIND PROHIBITED UNDER THIS SECTION. A HEALTH CARE  
35 PROFESSIONAL WHO RECEIVES INFORMATION THAT INDICATES THAT A PRISONER AS  
36 DEFINED BY THIS SECTION IS BEING, MAY IN THE FUTURE BE, OR HAS BEEN  
37 SUBJECTED TO TORTURE OR IMPROPER TREATMENT, MUST USE DUE DILIGENCE, IN  
38 ORDER TO ASSESS THE NATURE OF HIS OR HER CONDUCT AS COVERED BY THIS  
39 SECTION.

40 3. GENERAL OBLIGATIONS OF HEALTH CARE PROFESSIONALS. (A) EVERY HEALTH  
41 CARE PROFESSIONAL SHALL PROVIDE EVERY PRISONER UNDER HIS OR HER PROFES-  
42 SIONAL CARE WITH CARE OR TREATMENT CONSISTENT WITH GENERALLY APPLICABLE  
43 LEGAL, HEALTH AND PROFESSIONAL STANDARDS TO THE EXTENT THAT HE OR SHE IS  
44 REASONABLY ABLE TO DO SO UNDER THE CIRCUMSTANCES, INCLUDING PROTECTING  
45 THE CONFIDENTIALITY OF PATIENT INFORMATION.

46 (B) IN ALL CLINICAL ASSESSMENTS RELATING TO A PRISONER, WHETHER FOR  
47 THERAPEUTIC OR EVALUATIVE PURPOSES, HEALTH CARE PROFESSIONALS SHALL  
48 EXERCISE THEIR PROFESSIONAL JUDGMENT INDEPENDENT OF THE INTERESTS OF A  
49 GOVERNMENT OR OTHER THIRD PARTY.

50 4. CERTAIN CONDUCT OF HEALTH CARE PROFESSIONALS PROHIBITED. (A) NO  
51 HEALTH CARE PROFESSIONAL SHALL APPLY HIS OR HER KNOWLEDGE OR SKILLS IN  
52 RELATION TO, ENGAGE IN ANY PROFESSIONAL RELATIONSHIP WITH, OR PERFORM  
53 PROFESSIONAL SERVICES IN RELATION TO ANY PRISONER UNLESS THE PURPOSE IS  
54 SOLELY TO EVALUATE, TREAT, PROTECT, OR IMPROVE THE PHYSICAL OR MENTAL  
55 HEALTH OR CONDITION OF THE PRISONER (EXCEPT AS PERMITTED BY PARAGRAPH  
56 (B) OR (C) OF SUBDIVISION FIVE OF THIS SECTION).

1 (B) NO HEALTH CARE PROFESSIONAL SHALL ENGAGE, DIRECTLY OR INDIRECTLY,  
2 IN ANY ACT WHICH CONSTITUTES PARTICIPATION IN, COMPLICITY IN, INCITEMENT  
3 TO, ASSISTANCE IN, PLANNING OR DESIGN OF, OR ATTEMPT OR CONSPIRACY TO  
4 COMMIT TORTURE OR IMPROPER TREATMENT OF A PRISONER. PROHIBITED FORMS OF  
5 ENGAGEMENT INCLUDE BUT ARE NOT LIMITED TO:

6 (I) PROVIDING MEANS, KNOWLEDGE OR SKILLS, INCLUDING CLINICAL FINDINGS  
7 OR TREATMENT, WITH THE INTENT TO FACILITATE THE PRACTICE OF TORTURE OR  
8 IMPROPER TREATMENT;

9 (II) PERMITTING HIS OR HER KNOWLEDGE, SKILLS OR CLINICAL FINDINGS OR  
10 TREATMENT TO BE USED IN THE PROCESS OF OR TO FACILITATE TORTURE OR  
11 IMPROPER TREATMENT;

12 (III) EXAMINING, EVALUATING, OR TREATING A PRISONER TO CERTIFY WHETHER  
13 TORTURE OR IMPROPER TREATMENT CAN BEGIN, BE CONTINUED, OR BE RESUMED;

14 (IV) BEING PRESENT WHILE TORTURE OR IMPROPER TREATMENT IS BEING ADMIN-  
15 ISTERED;

16 (V) OMITTING OR SUPPRESSING INDICATIONS OF TORTURE OR IMPROPER TREAT-  
17 MENT FROM RECORDS OR REPORTS; AND

18 (VI) ALTERING HEALTH CARE RECORDS OR REPORTS TO HIDE, MISREPRESENT OR  
19 DESTROY EVIDENCE OF TORTURE OR IMPROPER TREATMENT.

20 (C) NO HEALTH CARE PROFESSIONAL SHALL APPLY HIS OR HER KNOWLEDGE OR  
21 SKILLS OR PERFORM ANY PROFESSIONAL SERVICE IN ORDER TO ASSIST IN THE  
22 PUNISHMENT, DETENTION, INCARCERATION, INTIMIDATION, OR COERCION OF A  
23 PRISONER WHEN SUCH ASSISTANCE IS PROVIDED IN A MANNER THAT MAY ADVERSELY  
24 AFFECT THE PHYSICAL OR MENTAL HEALTH OR CONDITION OF THE PRISONER  
25 (EXCEPT AS PERMITTED BY PARAGRAPH (A) OR (B) OF SUBDIVISION FIVE OF THIS  
26 SECTION).

27 (D) NO HEALTH CARE PROFESSIONAL SHALL PARTICIPATE IN THE INTERROGATION  
28 OF A PRISONER, INCLUDING BEING PRESENT IN THE INTERROGATION ROOM, ASKING  
29 OR SUGGESTING QUESTIONS, ADVISING ON THE USE OF SPECIFIC INTERROGATION  
30 TECHNIQUES, MONITORING THE INTERROGATION, OR MEDICALLY OR PSYCHOLOGICAL-  
31 LY EVALUATING A PERSON FOR THE PURPOSE OF IDENTIFYING POTENTIAL INTERRO-  
32 GATION METHODS OR STRATEGIES. HOWEVER, THIS PARAGRAPH SHALL NOT BAR A  
33 HEALTH CARE PROFESSIONAL FROM ENGAGING IN CONDUCT UNDER PARAGRAPH (D) OF  
34 SUBDIVISION FIVE OF THIS SECTION.

35 5. CERTAIN CONDUCT OF HEALTH CARE PROFESSIONALS PERMITTED. A HEALTH  
36 CARE PROFESSIONAL MAY ENGAGE IN THE FOLLOWING CONDUCT SO LONG AS IT DOES  
37 NOT VIOLATE SUBDIVISION THREE OR FOUR OF THIS SECTION, IT DOES NOT  
38 ADVERSELY AFFECT THE PHYSICAL OR MENTAL HEALTH OR CONDITION OF A PRISON-  
39 ER OR POTENTIAL SUBJECT, AND IS NOT OTHERWISE UNLAWFUL:

40 (A) APPROPRIATELY PARTICIPATING OR AIDING IN THE INVESTIGATION, PROSE-  
41 CUTION, OR DEFENSE OF A CRIMINAL, ADMINISTRATIVE OR CIVIL MATTER;

42 (B) PARTICIPATING IN AN ACT THAT RESTRAINS A PRISONER OR TEMPORARILY  
43 ALTERS THE PHYSICAL OR MENTAL ACTIVITY OF A PRISONER, WHERE THE ACT  
44 COMPLIES WITH GENERALLY APPLICABLE LEGAL, HEALTH AND PROFESSIONAL STAND-  
45 ARDS, IS NECESSARY FOR THE PROTECTION OF THE PHYSICAL OR MENTAL HEALTH,  
46 CONDITION OR SAFETY OF THE PRISONER, OTHER PRISONERS, OR PERSONS CARING  
47 FOR, GUARDING OR CONFINING THE PRISONER;

48 (C) CONDUCTING BONA FIDE HUMAN SUBJECT RESEARCH IN ACCORDANCE WITH  
49 GENERALLY ACCEPTED LEGAL, HEALTH AND PROFESSIONAL STANDARDS WHERE THE  
50 RESEARCH INCLUDES SAFEGUARDS FOR HUMAN SUBJECTS EQUIVALENT TO THOSE  
51 REQUIRED BY FEDERAL LAW, INCLUDING INFORMED CONSENT AND INSTITUTIONAL  
52 REVIEW BOARD APPROVAL WHERE APPLICABLE;

53 (D) TRAINING RELATED TO THE FOLLOWING PURPOSES, SO LONG AS IT IS NOT  
54 PROVIDED IN SUPPORT OF SPECIFIC ONGOING OR ANTICIPATED INTERROGATIONS:

55 (I) RECOGNIZING AND RESPONDING TO PERSONS WITH PHYSICAL OR MENTAL  
56 ILLNESS OR CONDITIONS,

1 (II) THE POSSIBLE PHYSICAL AND MENTAL EFFECTS OF PARTICULAR TECHNIQUES  
2 AND CONDITIONS OF INTERROGATION, OR

3 (III) THE DEVELOPMENT OF EFFECTIVE INTERROGATION STRATEGIES NOT  
4 INVOLVING THE PRACTICE OF TORTURE OR IMPROPER TREATMENT.

5 6. DUTY TO REPORT. A HEALTH CARE PROFESSIONAL WHO HAS REASONABLE  
6 GROUNDS (NOT BASED SOLELY ON PUBLICLY AVAILABLE INFORMATION) TO BELIEVE  
7 THAT TORTURE, IMPROPER TREATMENT OR OTHER CONDUCT IN VIOLATION OF THIS  
8 SECTION HAS OCCURRED, IS OCCURRING, OR WILL OCCUR SHALL, AS SOON AS IS  
9 POSSIBLE WITHOUT JEOPARDIZING THE PHYSICAL SAFETY OF HIMSELF OR HERSELF,  
10 THE PRISONER, OR OTHER PARTIES, REPORT SUCH CONDUCT TO:

11 (A) A GOVERNMENT AGENCY THAT THE HEALTH CARE PROFESSIONAL REASONABLY  
12 BELIEVES HAS LEGAL AUTHORITY TO PUNISH OR PREVENT THE CONTINUATION OF  
13 TORTURE OR THE IMPROPER TREATMENT OF A PRISONER OR CONDUCT IN VIOLATION  
14 OF THIS SECTION AND IS REASONABLY LIKELY TO ATTEMPT TO DO SO; OR

15 (B) A GOVERNMENTAL OR NON-GOVERNMENTAL ENTITY THAT THE HEALTH CARE  
16 PROFESSIONAL REASONABLY BELIEVES WILL NOTIFY SUCH A GOVERNMENT AGENCY OF  
17 THE TORTURE OR THE IMPROPER TREATMENT OF A PRISONER OR CONDUCT IN  
18 VIOLATION OF THIS SECTION OR TAKE OTHER ACTION TO PUBLICIZE OR PREVENT  
19 SUCH TORTURE, TREATMENT OR CONDUCT; AND

20 (C) IN ADDITION TO REPORTING UNDER PARAGRAPH (A) OR (B) OF THIS SUBDI-  
21 VISION: (I) IN THE CASE OF AN ALLEGED VIOLATION BY A HEALTH CARE PROFES-  
22 SIONAL LICENSED UNDER ARTICLE ONE HUNDRED THIRTY-ONE OR ONE HUNDRED  
23 THIRTY-ONE-B OF THE EDUCATION LAW, A REPORT SHALL BE FILED WITH THE  
24 OFFICE OF PROFESSIONAL MEDICAL CONDUCT; AND (II) IN THE CASE OF AN  
25 ALLEGED VIOLATION BY ANY OTHER HEALTH CARE PROFESSIONAL LICENSED, REGIS-  
26 TERED OR CERTIFIED UNDER TITLE EIGHT OF THE EDUCATION LAW, A REPORT  
27 SHALL BE FILED WITH THE OFFICE OF PROFESSIONAL DISCIPLINE; PROVIDED THAT  
28 FOR THE PURPOSE OF THIS PARAGRAPH, WHERE A PERSON HOLDS A LICENSE,  
29 REGISTRATION OR CERTIFICATION UNDER THE LAWS OF A JURISDICTION OTHER  
30 THAN THE STATE OF NEW YORK THAT IS FOR A PROFESSION SUBSTANTIALLY COMPA-  
31 RABLE TO ONE LISTED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION,  
32 THE PERSON SHALL BE DEEMED TO BE A HEALTH CARE PROFESSIONAL AND THE  
33 PERSON'S LICENSE, REGISTRATION OR CERTIFICATION SHALL BE DEEMED TO BE  
34 UNDER THE APPROPRIATE ARTICLE OF TITLE EIGHT OF THE EDUCATION LAW.

35 7. MITIGATION. THE FOLLOWING MAY BE CONSIDERED IN FULL OR PARTIAL  
36 MITIGATION OF A VIOLATION OF THIS SECTION BY THE HEALTH CARE PROFES-  
37 SIONAL:

38 (A) COMPLIANCE WITH SUBDIVISION SIX OF THIS SECTION; OR

39 (B) COOPERATION IN GOOD FAITH WITH AN INVESTIGATION OF A VIOLATION OF  
40 THIS SECTION.

41 8. APPLICABILITY. THIS SECTION SHALL APPLY TO CONDUCT TAKING PLACE  
42 WITHIN OR OUTSIDE NEW YORK STATE, AND WITHOUT REGARD TO WHETHER THE  
43 CONDUCT IS COMMITTED BY A GOVERNMENTAL OR NON-GOVERNMENTAL ENTITY, OFFI-  
44 CIAL, OR ACTOR OR UNDER ACTUAL OR ASSERTED COLOR OF LAW.

45 9. SCOPE OF PRACTICE NOT EXPANDED. THIS SECTION SHALL NOT BE CONSTRUED  
46 TO EXPAND THE LAWFUL SCOPE OF PRACTICE OF ANY HEALTH CARE PROFESSIONAL.

47 S 3. Section 6509 of the education law is amended by adding a new  
48 subdivision 15 to read as follows:

49 (15) ANY VIOLATION OF SECTION TWENTY-THREE OF THE PUBLIC HEALTH LAW  
50 (RELATING TO PARTICIPATION IN TORTURE OR IMPROPER TREATMENT OF PRISONERS  
51 BY HEALTH CARE PROFESSIONALS), SUBJECT TO MITIGATION UNDER THAT SECTION.

52 S 4. Section 6530 of the education law is amended by adding a new  
53 subdivision 50 to read as follows:

54 50. ANY VIOLATION OF SECTION TWENTY-THREE OF THE PUBLIC HEALTH LAW  
55 (RELATING TO PARTICIPATION IN TORTURE OR IMPROPER TREATMENT OF PRISONERS  
56 BY HEALTH CARE PROFESSIONALS), SUBJECT TO MITIGATION UNDER THAT SECTION.

1 S 5. Paragraphs (b) and (c) of subdivision 2 of section 740 of the  
2 labor law, as added by chapter 660 of the laws of 1984, are amended and  
3 a new paragraph (d) is added to read as follows:

4 (b) provides information to, or testifies before, any public body  
5 conducting an investigation, hearing or inquiry into any such violation  
6 of a law, rule or regulation by such employer; [or]

7 (c) objects to, or refuses to participate in any such activity, policy  
8 or practice in violation of a law, rule or regulation[.]; OR

9 (D) REPORTS OR THREATENS TO REPORT ANY VIOLATION OF SECTION  
10 TWENTY-THREE OF THE PUBLIC HEALTH LAW (RELATING TO PARTICIPATION IN  
11 TORTURE OR IMPROPER TREATMENT OF PRISONERS BY HEALTH CARE PROFES-  
12 SIONALS).

13 S 6. Subdivision 3 of section 740 of the labor law, as added by chap-  
14 ter 660 of the laws of 1984, is amended to read as follows:

15 3. Application. The protection against retaliatory personnel action  
16 provided by paragraph (a) of subdivision two of this section pertaining  
17 to disclosure to a public body shall not apply to an employee who makes  
18 such disclosure to a public body unless the employee has brought the  
19 activity, policy or practice in violation of law, rule or regulation to  
20 the attention of a supervisor of the employer and has afforded such  
21 employer a reasonable opportunity to correct such activity, policy or  
22 practice. HOWEVER, THIS SUBDIVISION SHALL NOT APPLY TO ANY REPORT OF A  
23 VIOLATION UNDER SECTION TWENTY-THREE OF THE PUBLIC HEALTH LAW (PARTIC-  
24 IPATION IN TORTURE OR IMPROPER TREATMENT OF PRISONERS BY HEALTH CARE  
25 PROFESSIONALS).

26 S 7. Paragraphs (a) and (b) of subdivision 2 of section 741 of the  
27 labor law, as added by chapter 24 of the laws of 2002, are amended and a  
28 new paragraph (c) is added to read as follows:

29 (a) discloses or threatens to disclose to a supervisor, or to a public  
30 body an activity, policy or practice of the employer or agent that the  
31 employee, in good faith, reasonably believes constitutes improper quali-  
32 ty of patient care; [or]

33 (b) objects to, or refuses to participate in any activity, policy or  
34 practice of the employer or agent that the employee, in good faith,  
35 reasonably believes constitutes improper quality of patient care[.]; OR

36 (C) REPORTS OR THREATENS TO REPORT ANY VIOLATION OF SECTION  
37 TWENTY-THREE OF THE PUBLIC HEALTH LAW (PARTICIPATION IN TORTURE OR  
38 IMPROPER TREATMENT OF PRISONERS BY HEALTH CARE PROFESSIONALS).

39 S 8. Subdivision 3 of section 741 of the labor law, as added by chap-  
40 ter 24 of the laws of 2002, is amended to read as follows:

41 3. Application. The protection against retaliatory personnel action  
42 provided by subdivision two of this section shall not apply unless the  
43 employee has brought the improper quality of patient care to the atten-  
44 tion of a supervisor and has afforded the employer a reasonable opportu-  
45 nity to correct such activity, policy or practice. This subdivision  
46 shall not apply to an action or failure to act described in paragraph  
47 (a) of subdivision two of this section where the improper quality of  
48 patient care described therein presents an imminent threat to public  
49 health or safety or to the health of a specific patient and the employee  
50 reasonably believes in good faith that reporting to a supervisor would  
51 not result in corrective action. HOWEVER, THIS SUBDIVISION SHALL NOT  
52 APPLY TO ANY REPORT OF A VIOLATION UNDER SECTION TWENTY-THREE OF THE  
53 PUBLIC HEALTH LAW (PARTICIPATION IN TORTURE OR IMPROPER TREATMENT OF  
54 PRISONERS BY HEALTH CARE PROFESSIONALS).

55 S 9. The introduction or enactment of this act shall not be construed  
56 to mean that: (a) conduct described by this act does not already violate

1 state law or constitute professional misconduct; or (b) conduct other  
2 than that described by this act does not violate other state law or  
3 otherwise constitute professional misconduct.

4 S 10. Severability. If any provision of this act, or any application  
5 of any provision of this act, is held to be invalid, that shall not  
6 affect the validity or effectiveness of any other provision of this act  
7 or any other application of any provision of this act.

8 S 11. This act shall take effect on the first of January next  
9 succeeding the date on which it shall have become a law.