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

4424

2011-2012 Regular Sessions

I N S E N A T E

April 5, 2011

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

AN ACT to amend the public health law, the insurance law and the criminal procedure law, in relation to requiring the reporting of medical malpractice to the office of professional medical conduct

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

Section 1. Section 230 of the public health law is amended by adding a new subdivision 9-b to read as follows:

9-B. (A) AT ANY TIME, IF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT HAS ACCRUED A TOTAL OF THREE REPORTS RELATING TO SEPARATE INCIDENTS CONCERNING ONE LICENSEE PURSUANT TO PARAGRAPH THREE OF SUBSECTION (B) OF SECTION THREE HUNDRED FIFTEEN OF THE INSURANCE LAW OR PARAGRAPH SEVEN OF SUBSECTION (B) OF SECTION FOUR THOUSAND EIGHT HUNDRED THREE OF THE INSURANCE LAW, SECTION 170.10 OR 180.90 OF THE CRIMINAL PROCEDURE LAW, SECTION TWENTY-EIGHT HUNDRED THREE-E OF THIS CHAPTER, AS ADDED BY CHAPTER EIGHT HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED EIGHTY OR SECTION FORTY-FOUR HUNDRED FIVE-B OF THIS CHAPTER, IN ANY FIVE CONSECUTIVE YEARS, THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT SHALL COMMENCE A PROFESSIONAL MISCONDUCT INVESTIGATION, AS SET OUT IN SUBDIVISION TEN OF THIS SECTION, AGAINST SUCH LICENSEE. NOTHING IN THIS SUBDIVISION SHALL PRECLUDE THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT FROM COMMENCING A PROFESSIONAL MISCONDUCT INVESTIGATION AGAINST A LICENSEE AT ANY TIME PRIOR TO THE RECEIPT OF THREE SUCH REPORTS IN FIVE YEARS.

(B) AT ANY TIME, IF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT HAS ACCRUED A TOTAL OF FIVE REPORTS RELATING TO SEPARATE INCIDENTS CONCERNING ONE LICENSEE PURSUANT TO PARAGRAPH FOUR OF SUBSECTION (B) OF SECTION THREE HUNDRED FIFTEEN OF THE INSURANCE LAW OR UNDER PARAGRAPH (A) OF THIS SUBDIVISION IN ANY TWO CONSECUTIVE YEARS, THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT SHALL COMMENCE A PROFESSIONAL MISCONDUCT INVESTIGATION, AS SET OUT IN SUBDIVISION TEN OF THIS SECTION, AGAINST SUCH

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

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LICENSEE. NOTHING IN THIS PROVISION SHALL PRECLUDE THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT FROM COMMENCING A PROFESSIONAL MISCONDUCT INVESTIGATION AGAINST A LICENSEE AT ANY TIME PRIOR TO THE RECEIPT OF FIVE SUCH REPORTS IN TWO YEARS.

S 2. Subsection (b) of section 315 of the insurance law is amended by adding two new paragraphs 3 and 4 to read as follows:

(3) IN ADDITION TO THE REPORTS REQUIRED BY THIS SUBSECTION, EVERY INSURANCE COMPANY ENGAGED IN ISSUING PROFESSIONAL MEDICAL MALPRACTICE INSURANCE IN THIS STATE SHALL REPORT ANY DISPOSITION, WHETHER BY JUDGMENT OR SETTLEMENT, OF ANY CLAIM AGAINST A PHYSICIAN, PHYSICIAN'S ASSISTANT, SPECIALIST'S ASSISTANT, OR HOSPITAL LICENSED IN THE STATE, TO THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT WITHIN THIRTY DAYS OF SUCH DISPOSITION. EACH HOSPITAL OR INDIVIDUAL LICENSED TO OPERATE IN THE STATE THAT IS SELF INSURED FOR MEDICAL MALPRACTICE OR INSURED BY A COMPANY NOT LICENSED TO DO BUSINESS WITHIN THE STATE SHALL ALSO REPORT ANY DISPOSITION, WHETHER BY JUDGMENT OR SETTLEMENT, OF ANY CLAIM FOR MEDICAL MALPRACTICE TO THE OFFICE OF MEDICAL CONDUCT WITHIN THIRTY DAYS OF SUCH DISPOSITION.

(4) IN ADDITION TO THE REPORTS REQUIRED BY THIS SUBSECTION, EVERY INSURANCE COMPANY ENGAGED IN ISSUING PROFESSIONAL MEDICAL MALPRACTICE INSURANCE IN THIS STATE SHALL REPORT ANY NOTICE OF LEGAL ACTION AGAINST A PHYSICIAN, PHYSICIAN'S ASSISTANT, SPECIALIST'S ASSISTANT, OR HOSPITAL LICENSED IN THE STATE, TO THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT WITHIN TEN DAYS OF RECEIPT OF SUCH NOTICE. EACH HOSPITAL OR INDIVIDUAL LICENSED TO OPERATE IN THE STATE THAT IS SELF INSURED FOR MEDICAL MALPRACTICE OR INSURED BY A COMPANY NOT LICENSED TO DO BUSINESS WITHIN THE STATE SHALL ALSO REPORT ANY NOTICE OF LEGAL ACTION FOR MEDICAL MALPRACTICE AGAINST SUCH HOSPITAL OR INDIVIDUAL TO THE OFFICE OF MEDICAL CONDUCT WITHIN TEN DAYS OF RECEIPT OF SUCH NOTICE.

S 3. Subsection (b) of section 4803 of the insurance law is amended by adding a new paragraph 7 to read as follows:

(7)(A) A MANAGED CARE ORGANIZATION SHALL REPORT IN WRITING TO THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT WITHIN THIRTY DAYS OF THE OCCURRENCE OF DENIAL, SUSPENSION, RESTRICTION, TERMINATION, OR CURTAILMENT OF TRAINING, EMPLOYMENT, ASSOCIATION OR PROFESSIONAL PRIVILEGES OR THE DENIAL OF CERTIFICATION OF COMPLETION OF TRAINING OF ANY PHYSICIAN, PHYSICIAN'S ASSISTANT, OR SPECIALIST'S ASSISTANT LICENSED BY THE STATE FOR REASONS RELATED TO ANY OF THE FOLLOWING:

(1) ALLEGED MENTAL OR PHYSICAL IMPAIRMENT, INCOMPETENCE, MALPRACTICE, MISCONDUCT OR ENDANGERMENT OF PATIENT SAFETY OR WELFARE;

(2) ANY PROFESSIONAL REVIEW ACTION THAT ADVERSELY AFFECTS THE CLINICAL PRIVILEGES OF SUCH INDIVIDUAL FOR A PERIOD OF LONGER THAN THIRTY DAYS; OR

(3) ACCEPTANCE OF SURRENDER OF CLINICAL PRIVILEGES OR ANY RESTRICTION OF SUCH PRIVILEGES OF SUCH INDIVIDUAL:

(I) WHILE THE INDIVIDUAL IS UNDER INVESTIGATION BY THE HEALTH CARE ENTITY RELATING TO POSSIBLE INCOMPETENCE OR IMPROPER PROFESSIONAL CONDUCT, OR

(II) IN RETURN FOR NOT CONDUCTING SUCH AN INVESTIGATION OR PROCEEDING.

(B) SUCH REPORT SHALL CONTAIN:

(1) THE NAME, WORK ADDRESS, AND WORK PHONE NUMBER OF THE INDIVIDUAL;

(2) THE HOME ADDRESS OF THE INDIVIDUAL, IF KNOWN;

(3) DATE OF BIRTH OF THE INDIVIDUAL;

(4) THE PROFESSION AND LICENSE NUMBER;

(5) ANY STATES OR TERRITORIES IN WHICH THE INDIVIDUAL HOLDS A PROFESSIONAL LICENSE, IF KNOWN;

(6) THE DATE OF THE ACTION TAKEN AGAINST SUCH INDIVIDUAL;
(7) A DETAILED DESCRIPTION OF THE ACTION TAKEN; AND
(8) THE REASON OR REASONS FOR THE MANAGED CARE ORGANIZATION'S ACTION OR THE NATURE OF THE ACTION OR CONDUCT WHICH LEAD TO THE RESIGNATION OR WITHDRAWAL AND THE DATE THEREOF.

S 4. Subdivision 9 of section 170.10 of the criminal procedure law, as renumbered by chapter 449 of the laws of 1992, is renumbered subdivision 10 and a new subdivision 9 is added to read as follows:

9. UPON THE FILING OF A MISDEMEANOR CONVICTION IN A LOCAL CRIMINAL COURT AGAINST A PHYSICIAN LICENSED BY THE STATE, THE COURT SHALL NOTIFY THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT OF SUCH CONVICTION IN WRITING. SUCH NOTIFICATION SHALL BE GIVEN NO LATER THAN FIVE DAYS FOLLOWING THE FILING OF THE CONVICTION WITH THE COURT, EXCLUDING SATURDAYS AND SUNDAYS.

S 5. The criminal procedure law is amended by adding a new section 180.90 to read as follows:

S 180.90 PROCEEDINGS UPON FELONY INDICTMENT; LICENSED PHYSICIAN.

UPON THE FILING OF A FELONY INDICTMENT IN A LOCAL CRIMINAL COURT AGAINST A PHYSICIAN LICENSED BY THE STATE, THE COURT SHALL NOTIFY THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT. THE COURT SHALL ALSO NOTIFY THE DEFENDANT'S PLACE OR PLACES OF EMPLOYMENT OF SUCH INDICTMENT IN WRITING, IF SUCH INDICTMENT RELATES TO THE PHYSICIAN'S EMPLOYMENT. SUCH NOTIFICATION SHALL BE GIVEN NO LATER THAN FIVE DAYS FOLLOWING THE FILING OF THE INDICTMENT WITH THE COURT, EXCLUDING SATURDAYS AND SUNDAYS.

S 6. This act shall take effect on the ninetieth day after it shall have become a law.