

2554

2015-2016 Regular Sessions

I N A S S E M B L Y

January 20, 2015

Introduced by M. of A. BARRETT -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to identification, charging, reporting and investigation of charges of professional misconduct by health care professionals

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

1 Section 1. Subdivision 9-b of section 230 of the public health law, as
2 added by chapter 532 of the laws of 2014, is amended to read as follows:
3 9-b. Neither the board for professional medical conduct nor the office
4 of professional medical conduct shall [identify,] charge A LICENSEE WITH
5 MISCONDUCT AS DEFINED IN SECTIONS SIXTY-FIVE HUNDRED THIRTY AND
6 SIXTY-FIVE HUNDRED THIRTY-ONE OF THE EDUCATION LAW, or cause a report
7 made to the director of such office to be investigated BEYOND A PRELIMI-
8 NARY REVIEW AS SET FORTH IN CLAUSE (A) OF SUBPARAGRAPH (I) OF PARAGRAPH
9 (A) OF SUBDIVISION TEN OF THIS SECTION, WHERE SUCH REPORT IS DETERMINED
10 TO BE based solely upon the recommendation or provision of a treatment
11 modality TO A PARTICULAR PATIENT by [a] SUCH licensee that is not
12 universally accepted by the medical profession, including but not limit-
13 ed to, varying modalities used in the treatment of Lyme disease and
14 other tick-borne diseases. [As used in this subdivision the term "licen-
15 see" shall mean a physician, physician's assistant, and specialist's
16 assistant.] When a licensee, acting in accordance with paragraph e of
17 subdivision four of section sixty-five hundred twenty-seven of the
18 education law, recommends or provides a treatment modality that effec-
19 tively treats human disease, pain, injury, deformity or physical condi-
20 tion FOR WHICH THE LICENSEE IS TREATING A PATIENT, the recommendation or
21 provision of that modality TO A PARTICULAR PATIENT shall not, by itself,
22 constitute professional misconduct. [This prohibition shall not exoner-
23 ate such licensee from otherwise applicable professional requirements]

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

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1 THE LICENSEE SHALL OTHERWISE ABIDE BY ALL OTHER APPLICABLE PROFESSIONAL
2 REQUIREMENTS.

3 S 2. Subparagraph (i) of paragraph (a) of subdivision 10 of section
4 230 of the public health law, is amended by chapter 542 of the laws of
5 2000, is amended to read as follows:

6 (i) (A) The board for professional medical conduct, by the director of
7 the office of professional medical conduct, may investigate on its own
8 any suspected professional misconduct, and shall investigate each
9 complaint received regardless of the source. BY THE CONCLUSION OF A
10 PRELIMINARY REVIEW, INCLUDING AN INTERNAL CLINICAL REVIEW, THE DIRECTOR
11 SHALL DETERMINE IF A REPORT IS BASED SOLELY UPON THE RECOMMENDATION OR
12 PROVISION OF A TREATMENT MODALITY BY A LICENSEE THAT IS NOT UNIVERSALLY
13 ACCEPTED BY THE MEDICAL PROFESSION, INCLUDING BUT NOT LIMITED TO VARYING
14 MODALITIES USED IN THE TREATMENT OF LYME DISEASE OR OTHER TICK-BORNE
15 DISEASES. UPON A DETERMINATION BY THE DIRECTOR THAT A REPORT IS BASED
16 SOLELY UPON THE PROVISION OF A TREATMENT MODALITY THAT IS NOT
17 UNIVERSALLY ACCEPTED, NO FURTHER REVIEW SHALL BE CONDUCTED AND NO CHARG-
18 ES SHALL BE BROUGHT. NOTHING IN THIS SECTION SHALL PRECLUDE THE DIRECTOR
19 FROM MAKING SUCH A DETERMINATION EARLIER IN, OR SUBSEQUENT TO, A PRELIM-
20 INARY REVIEW. (B) The director of the office of professional medical
21 conduct shall cause a preliminary review of every report made to the
22 department pursuant to section twenty-eight hundred three-e as added by
23 chapter eight hundred sixty-six of the laws of nineteen hundred eighty,
24 sections twenty-eight hundred five-1 and forty-four hundred five-b of
25 this chapter, and section three hundred fifteen of the insurance law, to
26 determine if such report reasonably appears to reflect physician conduct
27 warranting further investigation pursuant to this subparagraph.

28 S 3. This act shall take effect immediately and shall apply to any
29 professional discipline matter or administrative or judicial review
30 thereof pending on or after the date on which this act shall take
31 effect; provided, however, that the amendments to subparagraph (i) of
32 paragraph (a) of subdivision 10 of section 230 of the public health law
33 made by section two of this act shall not affect the expiration of such
34 paragraph and shall be deemed to expire therewith.