

7791--B

I N S E N A T E

May 12, 2016

Introduced by Sens. LAVALLE, HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to access to patient or client records in the investigation and prosecution of professional licensing and misconduct proceedings and summary suspension of professional licenses

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

1 Section 1. Section 6501 of the education law, as amended by chapter 81
2 of the laws of 1995, is amended to read as follows:
3 S 6501. Admission to a profession (licensing) AND CRIMINAL HISTORY
4 RECORDS SEARCH. 1. ADMISSION. Admission to practice of a profession in
5 this state is accomplished by a license being issued to a qualified
6 applicant by the education department. To qualify for a license an
7 applicant shall meet the requirements prescribed in the article for the
8 particular profession and shall meet the requirements prescribed in
9 section 3-503 of the general obligations law.
10 2. MORAL CHARACTER REQUIREMENT. NOTWITHSTANDING ANY OTHER PROVISION OF
11 LAW OR REGULATION TO THE CONTRARY, TO QUALIFY FOR A PROFESSIONAL LICENSE
12 OR TO BE A REGISTERED ENTITY UNDER THIS TITLE, AN APPLICANT FOR LICEN-
13 SURE OR REGISTRATION AS DEFINED BY THE COMMISSIONER IN REGULATIONS SHALL
14 BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT.
15 3. MANDATORY REPORTING OF CONVICTIONS AND PENDING CRIMINAL CHARGES AND
16 ADVERSE EMPLOYMENT ACTIONS.
17 A. ALL LICENSEES AS DEFINED BY THE COMMISSIONER IN REGULATION, SHALL
18 BE REQUIRED TO REPORT TO THE DEPARTMENT WITHIN THIRTY DAYS ANY RECORD OF
19 A CONVICTION OF A CRIME AND/OR ANY PENDING CRIMINAL CHARGES. SUCH
20 REPORTING REQUIREMENTS SHALL NOT APPLY FOR TRAFFIC VIOLATIONS, ACQUIT-
21 TALS OR DISMISSED CHARGES. LICENSEES SHALL ALSO REPORT TO THE DEPARTMENT

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

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1 WITHIN THIRTY DAYS ANY CHARGES OF PROFESSIONAL MISCONDUCT IN ANY JURIS-
2 DICTION AND/OR ANY ADVERSE ACTIONS UNDERTAKEN BY A HOSPITAL, INSTITUTION
3 OR EMPLOYER AS A RESULT OF THE LICENSEE'S PROFESSIONAL DUTIES. FAILURE
4 OF A LICENSEE TO PROVIDE SUCH A REPORT TO THE DEPARTMENT WITHIN THIRTY
5 DAYS OF THE ACTION, SHALL BE GROUNDS FOR PROFESSIONAL MISCONDUCT PURSU-
6 ANT TO SECTION SIXTY-FIVE HUNDRED TEN OF THIS ARTICLE.

7 B. THE DEPARTMENT SHALL PROMULGATE A FORM TO BE PROVIDED TO ALL LICEN-
8 SEES BY WHICH THEY MUST REPORT CHARGES AS DEFINED IN PARAGRAPH A OF THIS
9 SUBDIVISION.

10 C. ALL SUCH RECORDS PROCESSED AND SUBMITTED PURSUANT TO THIS SUBDIVI-
11 SION SHALL BE CONFIDENTIAL PURSUANT TO THE APPLICABLE FEDERAL AND STATE
12 LAWS, RULES AND REGULATIONS, AND SHALL NOT BE PUBLISHED OR IN ANY WAY
13 DISCLOSED TO PERSONS OTHER THAN THE DEPARTMENT PERSONNEL, UNLESS OTHER-
14 WISE AUTHORIZED BY LAW. NO CAUSE OF ACTION AGAINST THE COMMISSIONER, THE
15 DEPARTMENT OR THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR DAMAGES
16 RELATED TO THE DISSEMINATION OF RECORDS PURSUANT TO THIS SUBDIVISION
17 SHALL EXIST WHEN THE COMMISSIONER, DEPARTMENT OR DIVISION OF CRIMINAL
18 JUSTICE SERVICES HAVE REASONABLY AND IN GOOD FAITH RELIED UPON THE ACCU-
19 RACY AND COMPLETENESS OF INFORMATION FURNISHED TO IT BY THE LICENSEE OR
20 QUALIFIED AGENCIES.

21 D. UPON RECEIPT OF A REPORT FROM A LICENSEE THAT THEY HAVE BEEN THE
22 SUBJECT OF A CRIMINAL CONVICTION OR DISCIPLINARY ACTION, THE DEPARTMENT
23 MAY REFER THE REPORT TO THE PROFESSIONAL CONDUCT OFFICER FOR AN INVESTI-
24 GATION OF POTENTIAL DISCIPLINARY ACTION UNDER THE APPLICABLE PROVISIONS
25 OF THIS SECTION.

26 E. IN THE EVENT THAT A LICENSEE IS CONVICTED OF ANY CRIME, THE
27 DISTRICT ATTORNEY SHALL PROVIDE NOTICE THEREOF TO THE COMMISSIONER.
28 UPON RECEIVING NOTICE OF A CONVICTION FROM A DISTRICT ATTORNEY PURSUANT
29 TO THIS PARAGRAPH, THE COMMISSIONER SHALL, WITHOUT DELAY, PROCEED TO
30 DETERMINE WHETHER THE INDIVIDUAL POSSESSES GOOD MORAL CHARACTER, IN
31 ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER. NOTHING IN THIS
32 ARTICLE SHALL BE CONSTRUED AS CREATING ANY AUTHORITY TO TAKE AN ADVERSE
33 ACTION AGAINST A LICENSEE BY VIRTUE OF A REPORT PURSUANT TO THIS PARA-
34 GRAPH WHICH HAS NOT BEEN SUBSTANTIATED.

35 S 2. Section 6510 of the education law is amended by adding a new
36 subdivision 10 to read as follows:

37 10. SUMMARY ACTION. A. WHENEVER THE COMMISSIONER OR HIS OR HER DESIG-
38 NEE, (I) AFTER BEING PRESENTED WITH INFORMATION INDICATING THAT A LICEN-
39 SEE OR A REGISTERED ENTITY IS CAUSING OR ENGAGING IN CONDUCT WHICH HAS
40 RESULTED IN PATIENT AND/OR CLIENT HARM AND IF IN THE COMMISSIONER'S
41 OPINION IT WOULD BE PREJUDICIAL TO THE INTERESTS OF THE PEOPLE TO DELAY
42 ACTION UNTIL AN OPPORTUNITY FOR A HEARING CAN BE PROVIDED IN ACCORDANCE
43 WITH THE PREHEARING AND HEARING PROVISIONS OF THIS SECTION; OR (II)
44 AFTER AN INVESTIGATION AND A RECOMMENDATION BY THE COMMISSIONER THAT
45 BASED UPON A DETERMINATION THAT A LICENSEE IS CAUSING OR ENGAGING IN
46 CONDUCT WHICH IN THE COMMISSIONER'S OPINION CONSTITUTES AN IMMINENT
47 DANGER TO THE HEALTH AND/OR SAFETY OF THE PEOPLE, AND THAT IT THEREFORE
48 APPEARS TO BE PREJUDICIAL TO THE INTERESTS OF THE PEOPLE TO DELAY ACTION
49 UNTIL AN OPPORTUNITY FOR A HEARING CAN BE PROVIDED IN ACCORDANCE WITH
50 THE PREHEARING AND HEARING PROVISIONS OF THIS SECTION; THE COMMISSIONER
51 MAY ORDER THE LICENSEE, BY WRITTEN NOTICE, TO DISCONTINUE SUCH DANGEROUS
52 CONDUCT, WHICH SHALL INCLUDE THE SUSPENSION OF ANY PRIVILEGES TO PRAC-
53 TICE THE PROFESSION PURSUANT TO THIS TITLE IN THE STATE OF NEW YORK, OR
54 TAKE CERTAIN ACTION IMMEDIATELY AND FOR A PERIOD OF NINETY DAYS FROM THE
55 DATE OF SERVICE OF THE ORDER. WITHIN TEN DAYS FROM THE DATE OF SERVICE
56 OF SUCH ORDER, THE DEPARTMENT SHALL REGULARLY SCHEDULE SUCH HEARING

1 PROCEEDINGS AS REQUIRED BY THIS SECTION, PROVIDED, HOWEVER, THAT THE
2 HEARING SHALL BE COMPLETED WITHIN NINETY DAYS OF THE DATE OF SERVICE OF
3 THE ORDER. TO THE EXTENT THAT THE ISSUE OF IMMINENT DANGER OR HARM CAN
4 BE PROVEN WITHOUT THE ATTORNEY REPRESENTING THE DEPARTMENT PUTTING IN
5 ITS ENTIRE CASE, THE COMMISSIONER SHALL FIRST DETERMINE WHETHER BY A
6 PREPONDERANCE OF THE EVIDENCE THE LICENSEE IS CAUSING, ENGAGING IN OR
7 MAINTAINING A CONDITION OR ACTIVITY WHICH CONSTITUTES AN IMMINENT DANGER
8 OR HARM TO THE HEALTH OF THE PEOPLE. THE ATTORNEY REPRESENTING THE
9 DEPARTMENT SHALL HAVE THE BURDEN OF GOING FORWARD AND PROVING BY A
10 PREPONDERANCE OF THE EVIDENCE THAT THE LICENSEE'S CONDUCT, ACTIVITY OR
11 PRACTICE RESULTED IN PATIENT OR CLIENT HARM, OR SUCH PRACTICE CONSTI-
12 TUTES AN IMMINENT DANGER TO THE HEALTH AND/OR SAFETY OF THE PEOPLE. THE
13 LICENSEE SHALL HAVE AN OPPORTUNITY TO BE HEARD AND TO PRESENT PROOF.
14 WHEN BOTH THE DEPARTMENT AND THE LICENSEE HAVE COMPLETED THEIR CASES
15 WITH RESPECT TO THE QUESTION OF HARM OR IMMINENT DANGER, THE COMMISSION-
16 ER OR HIS OR HER DESIGNEE SHALL PROMPTLY MAKE A RECOMMENDATION TO A
17 SINGLE MEMBER OF THE BOARD OF REGENTS, APPOINTED BY THE CHANCELLOR OF
18 THE BOARD OF REGENTS OR HIS OR HER DESIGNEE, ON THE ISSUE OF HARM OR
19 IMMINENT DANGER AND DETERMINE WHETHER THE SUMMARY ORDER SHOULD BE LEFT
20 IN EFFECT, MODIFIED OR VACATED, AND CONTINUE THE HEARING ON ALL THE
21 REMAINING CHARGES, IF ANY, IN ACCORDANCE WITH THE PROVISIONS OF THIS
22 SECTION. WITHIN TEN DAYS OF THE COMMISSIONER OR HIS OR HER DESIGNEE'S
23 RECOMMENDATION, THE SINGLE MEMBER OF THE BOARD OF REGENTS, AS APPOINTED
24 BY THE CHANCELLOR OF THE BOARD OF REGENTS OR HIS OR HER DESIGNEE, SHALL
25 DETERMINE WHETHER OR NOT TO ADOPT THE RECOMMENDATIONS OF THE COMMISSION-
26 ER OR HIS OR HER HER DESIGNEE, IN WHOLE OR IN PART, AND SHALL LEAVE IN
27 EFFECT, MODIFY OR VACATE THE SUMMARY ORDER. WHERE THE ORDER OF THE
28 COMMISSIONER REMAINS IN EFFECT EITHER IN WHOLE OR IN PART, A HEARING ON
29 THE REMAINING CHARGES OF PROFESSIONAL MISCONDUCT SHALL BE COMMENCED
30 PURSUANT TO THE PROVISIONS OF THIS SECTION. THE DEPARTMENT MUST MAKE A
31 REASONABLE EFFORT TO AVOID ANY DELAY IN COMPLETING AND DETERMINING SUCH
32 PROCEEDINGS. IF, AT THE CONCLUSION OF THE INITIAL HEARING, (I) THE
33 SINGLE BOARD MEMBER OF THE BOARD OF REGENTS DETERMINES THAT THE BASIS OF
34 THE CHARGES CONSTITUTED IMMINENT DANGER OR HARM AND THAT THE SUMMARY
35 ORDER SHALL CONTINUE, AND (II) THE NINETY DAY TERM OF THE ORDER HAS NOT
36 EXPIRED, THE SUMMARY ORDER SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL A
37 FINAL DECISION HAS BEEN RENDERED BY THE BOARD OF REGENTS PURSUANT TO THE
38 APPLICABLE PROVISIONS OF THIS SECTION. NOTWITHSTANDING ANY OTHER
39 PROVISION OF LAW TO THE CONTRARY, A SUMMARY ORDER SHALL BE PUBLIC UPON
40 ISSUANCE.

41 B. WHEN A LICENSEE HAS PLEADED OR BEEN FOUND GUILTY OR CONVICTED OF
42 COMMITTING AN ACT CONSTITUTING A FELONY UNDER NEW YORK STATE LAW OR
43 FEDERAL LAW, OR THE LAW OF ANOTHER JURISDICTION WHICH, IF COMMITTED
44 WITHIN THIS STATE, WOULD HAVE CONSTITUTED A FELONY UNDER NEW YORK STATE
45 LAW, OR WHEN THE DULY AUTHORIZED PROFESSIONAL DISCIPLINARY AGENCY OF
46 ANOTHER JURISDICTION HAS MADE A FINDING SUBSTANTIALLY EQUIVALENT TO A
47 FINDING THAT THE PRACTICE OF THE PROFESSION BY THE LICENSEE IN THAT
48 JURISDICTION CONSTITUTES AN IMMINENT DANGER TO THE HEALTH OF ITS PEOPLE,
49 OR WHEN A LICENSEE HAS BEEN DISCIPLINED BY A DULY AUTHORIZED PROFES-
50 SIONAL DISCIPLINARY AGENCY OF ANOTHER JURISDICTION FOR ACTS WHICH IF
51 COMMITTED IN THIS STATE WOULD HAVE CONSTITUTED THE BASIS FOR SUMMARY
52 ACTION BY THE DEPARTMENT PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, A
53 SINGLE BOARD MEMBER OF THE BOARD OF REGENTS, APPOINTED BY THE CHANCELLOR
54 OF THE BOARD OF REGENTS OR HIS OR HER DESIGNEE, AFTER A RECOMMENDATION
55 BY THE COMMISSIONER OR HIS OR HER DESIGNEE, MAY ORDER THE LICENSEE, BY
56 WRITTEN NOTICE, TO DISCONTINUE OR REFRAIN FROM PRACTICING THE PROFESSION

1 IN WHOLE OR IN PART OR TO TAKE CERTAIN IMMEDIATE ACTIONS AUTHORIZED
2 PURSUANT TO THIS TITLE. THE ORDER OF THE SINGLE MEMBER OF THE BOARD OF
3 REGENTS SHALL CONSTITUTE SUMMARY ACTION AGAINST THE LICENSEE AND BECOME
4 PUBLIC UPON ISSUANCE. THE SUMMARY SUSPENSION SHALL REMAIN IN EFFECT
5 UNTIL THE FINAL DETERMINATION OF THE REGENTS REVIEW COMMITTEE, WHICH
6 SHALL COMMENCE WITHIN NINETY DAYS OF THE DATE OF SERVICE OF THE DEPART-
7 MENT'S ORDER AND OTHERWISE BE HELD IN ACCORDANCE WITH PARAGRAPH A OF
8 THIS SUBDIVISION.

9 C. PROVIDED HOWEVER, THE PROVISIONS OF THIS SUBDIVISION SHALL NOT
10 APPLY TO INDIVIDUALS LICENSED UNDER ARTICLE ONE HUNDRED THIRTY-ONE,
11 ARTICLE ONE HUNDRED THIRTY-ONE-B, AND ARTICLE ONE HUNDRED THIRTY-ONE-C
12 OF THIS TITLE, WHO ARE REGULATED UNDER THE JURISDICTION OF THE OFFICE OF
13 PROFESSIONAL MEDICAL CONDUCT AS DEFINED IN SECTION TWO HUNDRED THIRTY OF
14 THE PUBLIC HEALTH LAW.

15 S 3. Subdivision 8 of section 6506 of the education law, as amended by
16 chapter 866 of the laws of 1980, is amended to read as follows:

17 (8) Designate a professional conduct officer, who shall be the chief
18 administrative officer of the office of the professions, or his OR HER
19 designee, in connection with professional licensing and misconduct
20 proceedings and criminal matters, such officer to be empowered to issue
21 subpoenas and administer oaths in connection with such proceedings.
22 NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, SAID PROFESSIONAL
23 CONDUCT OFFICER, OR HIS OR HER REPRESENTATIVES, MAY EXAMINE AND OBTAIN
24 RECORDS OF PATIENTS OR CLIENTS IN ANY INVESTIGATION OR PROCEEDING BY THE
25 DEPARTMENT ACTING WITHIN THE SCOPE OF ITS AUTHORIZATION. UNLESS EXPRESS
26 CONSENT IS OBTAINED FROM THE PATIENT OR CLIENT, ANY INFORMATION SO
27 OBTAINED SHALL BE CONFIDENTIAL AND SHALL NOT BE FURTHER DISCLOSED EXCEPT
28 TO THE EXTENT NECESSARY FOR THE PROPER FUNCTION OF THE DEPARTMENT, AND
29 THE NAME OF THE PATIENT OR CLIENT MAY NOT BE DISCLOSED BY THE DEPARTMENT
30 OR ITS EMPLOYEES AT ANY STAGE OF THE PROCEEDINGS UNLESS THE PATIENT OR
31 CLIENT HAS EXPRESSLY CONSENTED. ANY OTHER USE OR DISSEMINATION OF INFOR-
32 MATION FROM SUCH RECORDS BY ANY PERSON BY ANY MEANS, UNLESS IT IS PURSU-
33 ANT TO A VALID COURT ORDER OR OTHERWISE AUTHORIZED BY LAW, SHALL BE
34 PROHIBITED;

35 S 4. This act shall take effect on the one hundred eightieth day after
36 it shall have become a law.