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

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:

Section 1. Section 6501 of the education law, as amended by chapter 81 of the laws of 1995, is amended to read as follows:

S 6501. Admission to a profession (licensing) AND CRIMINAL HISTORY RECORDS SEARCH. 1. ADMISSION. Admission to practice of a profession in this state is accomplished by a license being issued to a qualified applicant by the education department. To qualify for a license an applicant shall meet the requirements prescribed in the article for the particular profession and shall meet the requirements prescribed in section 3-503 of the general obligations law.

2. MORAL CHARACTER REQUIREMENT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR REGULATION TO THE CONTRARY, TO QUALIFY FOR A PROFESSIONAL LICENSE OR TO BE A REGISTERED ENTITY UNDER THIS TITLE, AN APPLICANT FOR LICENSURE OR REGISTRATION AS DEFINED BY THE COMMISSIONER IN REGULATIONS SHALL BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT.

3. MANDATORY REPORTING OF CONVICTIONS AND PENDING CRIMINAL CHARGES AND ADVERSE EMPLOYMENT ACTIONS.

A. ALL LICENSEES AS DEFINED BY THE COMMISSIONER IN REGULATION, SHALL BE REQUIRED TO REPORT TO THE DEPARTMENT WITHIN THIRTY DAYS ANY RECORD OF A CONVICTION OF A CRIME AND/OR ANY PENDING CRIMINAL CHARGES. SUCH REPORTING REQUIREMENTS SHALL NOT APPLY FOR TRAFFIC VIOLATIONS, ACQUITTALS 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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WITHIN THIRTY DAYS ANY CHARGES OF PROFESSIONAL MISCONDUCT IN ANY JURISDICTION AND/OR ANY ADVERSE ACTIONS UNDERTAKEN BY A HOSPITAL, INSTITUTION OR EMPLOYER AS A RESULT OF THE LICENSEE'S PROFESSIONAL DUTIES. FAILURE OF A LICENSEE TO PROVIDE SUCH A REPORT TO THE DEPARTMENT WITHIN THIRTY DAYS OF THE ACTION, SHALL BE GROUNDS FOR PROFESSIONAL MISCONDUCT PURSUANT TO SECTION SIXTY-FIVE HUNDRED TEN OF THIS ARTICLE.

B. THE DEPARTMENT SHALL PROMULGATE A FORM TO BE PROVIDED TO ALL LICENSEES BY WHICH THEY MUST REPORT CHARGES AS DEFINED IN PARAGRAPH A OF THIS SUBDIVISION.

C. ALL SUCH RECORDS PROCESSED AND SUBMITTED PURSUANT TO THIS SUBDIVISION SHALL BE CONFIDENTIAL PURSUANT TO THE APPLICABLE FEDERAL AND STATE LAWS, RULES AND REGULATIONS, AND SHALL NOT BE PUBLISHED OR IN ANY WAY DISCLOSED TO PERSONS OTHER THAN THE DEPARTMENT PERSONNEL, UNLESS OTHERWISE AUTHORIZED BY LAW. NO CAUSE OF ACTION AGAINST THE COMMISSIONER, THE DEPARTMENT OR THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR DAMAGES RELATED TO THE DISSEMINATION OF RECORDS PURSUANT TO THIS SUBDIVISION SHALL EXIST WHEN THE COMMISSIONER, DEPARTMENT OR DIVISION OF CRIMINAL JUSTICE SERVICES HAVE REASONABLY AND IN GOOD FAITH RELIED UPON THE ACCURACY AND COMPLETENESS OF INFORMATION FURNISHED TO IT BY THE LICENSEE OR QUALIFIED AGENCIES.

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

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

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

10. SUMMARY ACTION. A. WHENEVER THE COMMISSIONER OR HIS OR HER DESIGNEE, (I) AFTER BEING PRESENTED WITH INFORMATION INDICATING THAT A LICENSEE OR A REGISTERED ENTITY IS CAUSING OR ENGAGING IN CONDUCT WHICH HAS RESULTED IN PATIENT AND/OR CLIENT HARM AND IF IN THE COMMISSIONER'S OPINION IT WOULD BE PREJUDICIAL TO THE INTERESTS OF THE PEOPLE TO DELAY ACTION UNTIL AN OPPORTUNITY FOR A HEARING CAN BE PROVIDED IN ACCORDANCE WITH THE PREHEARING AND HEARING PROVISIONS OF THIS SECTION; OR (II) AFTER AN INVESTIGATION AND A RECOMMENDATION BY THE COMMISSIONER THAT BASED UPON A DETERMINATION THAT A LICENSEE IS CAUSING OR ENGAGING IN CONDUCT WHICH IN THE COMMISSIONER'S OPINION CONSTITUTES AN IMMINENT DANGER TO THE HEALTH AND/OR SAFETY OF THE PEOPLE, AND THAT IT THEREFORE APPEARS TO BE PREJUDICIAL TO THE INTERESTS OF THE PEOPLE TO DELAY ACTION UNTIL AN OPPORTUNITY FOR A HEARING CAN BE PROVIDED IN ACCORDANCE WITH THE PREHEARING AND HEARING PROVISIONS OF THIS SECTION; THE COMMISSIONER MAY ORDER THE LICENSEE, BY WRITTEN NOTICE, TO DISCONTINUE SUCH DANGEROUS CONDUCT, WHICH SHALL INCLUDE THE SUSPENSION OF ANY PRIVILEGES TO PRACTICE THE PROFESSION PURSUANT TO THIS TITLE IN THE STATE OF NEW YORK, OR TAKE CERTAIN ACTION IMMEDIATELY AND FOR A PERIOD OF NINETY DAYS FROM THE DATE OF SERVICE OF THE ORDER. WITHIN TEN DAYS FROM THE DATE OF SERVICE OF SUCH ORDER, THE DEPARTMENT SHALL REGULARLY SCHEDULE SUCH HEARING

PROCEEDINGS AS REQUIRED BY THIS SECTION, PROVIDED, HOWEVER, THAT THE HEARING SHALL BE COMPLETED WITHIN NINETY DAYS OF THE DATE OF SERVICE OF THE ORDER. TO THE EXTENT THAT THE ISSUE OF IMMINENT DANGER OR HARM CAN BE PROVEN WITHOUT THE ATTORNEY REPRESENTING THE DEPARTMENT PUTTING IN ITS ENTIRE CASE, THE COMMISSIONER SHALL FIRST DETERMINE WHETHER BY A PREPONDERANCE OF THE EVIDENCE THE LICENSEE IS CAUSING, ENGAGING IN OR MAINTAINING A CONDITION OR ACTIVITY WHICH CONSTITUTES AN IMMINENT DANGER OR HARM TO THE HEALTH OF THE PEOPLE. THE ATTORNEY REPRESENTING THE DEPARTMENT SHALL HAVE THE BURDEN OF GOING FORWARD AND PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE LICENSEE'S CONDUCT, ACTIVITY OR PRACTICE RESULTED IN PATIENT OR CLIENT HARM, OR SUCH PRACTICE CONSTITUTES AN IMMINENT DANGER TO THE HEALTH AND/OR SAFETY OF THE PEOPLE. THE LICENSEE SHALL HAVE AN OPPORTUNITY TO BE HEARD AND TO PRESENT PROOF. WHEN BOTH THE DEPARTMENT AND THE LICENSEE HAVE COMPLETED THEIR CASES WITH RESPECT TO THE QUESTION OF HARM OR IMMINENT DANGER, THE COMMISSIONER OR HIS OR HER DESIGNEE SHALL PROMPTLY MAKE A RECOMMENDATION TO A SINGLE MEMBER OF THE BOARD OF REGENTS, APPOINTED BY THE CHANCELLOR OF THE BOARD OF REGENTS OR HIS OR HER DESIGNEE, ON THE ISSUE OF HARM OR IMMINENT DANGER AND DETERMINE WHETHER THE SUMMARY ORDER SHOULD BE LEFT IN EFFECT, MODIFIED OR VACATED, AND CONTINUE THE HEARING ON ALL THE REMAINING CHARGES, IF ANY, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. WITHIN TEN DAYS OF THE COMMISSIONER OR HIS OR HER DESIGNEE'S RECOMMENDATION, THE SINGLE MEMBER OF THE BOARD OF REGENTS, AS APPOINTED BY THE CHANCELLOR OF THE BOARD OF REGENTS OR HIS OR HER DESIGNEE, SHALL DETERMINE WHETHER OR NOT TO ADOPT THE RECOMMENDATIONS OF THE COMMISSIONER OR HIS OR HER HER DESIGNEE, IN WHOLE OR IN PART, AND SHALL LEAVE IN EFFECT, MODIFY OR VACATE THE SUMMARY ORDER. WHERE THE ORDER OF THE COMMISSIONER REMAINS IN EFFECT EITHER IN WHOLE OR IN PART, A HEARING ON THE REMAINING CHARGES OF PROFESSIONAL MISCONDUCT SHALL BE COMMENCED PURSUANT TO THE PROVISIONS OF THIS SECTION. THE DEPARTMENT MUST MAKE A REASONABLE EFFORT TO AVOID ANY DELAY IN COMPLETING AND DETERMINING SUCH PROCEEDINGS. IF, AT THE CONCLUSION OF THE INITIAL HEARING, (I) THE SINGLE BOARD MEMBER OF THE BOARD OF REGENTS DETERMINES THAT THE BASIS OF THE CHARGES CONSTITUTED IMMINENT DANGER OR HARM AND THAT THE SUMMARY ORDER SHALL CONTINUE, AND (II) THE NINETY DAY TERM OF THE ORDER HAS NOT EXPIRED, THE SUMMARY ORDER SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL A FINAL DECISION HAS BEEN RENDERED BY THE BOARD OF REGENTS PURSUANT TO THE APPLICABLE PROVISIONS OF THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A SUMMARY ORDER SHALL BE PUBLIC UPON ISSUANCE.

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

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

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

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

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

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