

10532

I N A S S E M B L Y

May 31, 2016

Introduced by M. of A. GLICK -- read once and referred to the Committee on Higher Education

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 LICENSED PROFESSIONALS AS DEFINED BY THE COMMISSIONER IN REGU-
18 LATION, SHALL BE REQUIRED TO REPORT TO THE DEPARTMENT WITHIN THIRTY DAYS
19 ANY RECORD OF A CONVICTION OF A CRIME AND/OR ANY PENDING CRIMINAL CHARG-
20 ES. SUCH REPORTING REQUIREMENTS SHALL NOT APPLY FOR TRAFFIC VIOLATIONS,
21 ACQUITTALS OR DISMISSED CHARGES. LICENSEES SHALL ALSO REPORT TO THE
22 DEPARTMENT WITHIN THIRTY DAYS ANY CHARGES OF PROFESSIONAL MISCONDUCT IN
23 ANY JURISDICTION AND/OR ANY ADVERSE ACTIONS UNDERTAKEN BY A HOSPITAL,
24 INSTITUTION OR EMPLOYER AS A RESULT OF THE LICENSEE'S PROFESSIONAL
25 DUTIES. FAILURE OF A LICENSED PROFESSIONAL TO PROVIDE SUCH A REPORT TO
26 THE DEPARTMENT WITHIN THIRTY DAYS OF THE ACTION, SHALL BE GROUNDS FOR

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

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1 PROFESSIONAL MISCONDUCT PURSUANT TO SECTION SIXTY-FIVE HUNDRED TEN OF
2 THIS ARTICLE.

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

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8 LAWS, RULES AND REGULATIONS, AND SHALL NOT BE PUBLISHED OR IN ANY WAY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

17 D. UPON RECEIPT OF A REPORT FROM A LICENSED PROFESSIONAL THAT THEY
18 HAVE BEEN THE SUBJECT OF A CRIMINAL CONVICTION OR DISCIPLINARY ACTION,
19 THE DEPARTMENT MAY REFER THE REPORT TO THE PROFESSIONAL CONDUCT OFFICER
20 FOR AN INVESTIGATION OF POTENTIAL DISCIPLINARY ACTION UNDER THE APPLICA-
21 BLE PROVISIONS OF THIS SECTION.

22 E. IN THE EVENT THAT A LICENSED PROFESSIONAL IS CONVICTED OF ANY
23 CRIME, THE DISTRICT ATTORNEY SHALL PROVIDE NOTICE THEREOF TO THE COMMIS-
24 SIONER. UPON RECEIVING NOTICE OF A CONVICTION FROM A DISTRICT ATTORNEY
25 PURSUANT TO THIS PARAGRAPH, THE COMMISSIONER SHALL, WITHOUT DELAY,
26 PROCEED TO DETERMINE WHETHER THE INDIVIDUAL POSSESSES GOOD MORAL CHARAC-
27 TER, IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER. NOTHING IN
28 THIS ARTICLE SHALL BE CONSTRUED AS CREATING ANY AUTHORITY TO TAKE AN
29 ADVERSE ACTION AGAINST A LICENSEE BY VIRTUE OF A REPORT PURSUANT TO THIS
30 PARAGRAPH WHICH HAS NOT BEEN SUBSTANTIATED.

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

33 10. SUMMARY ACTION. A. WHENEVER THE COMMISSIONER OR HIS OR HER DESIG-
34 NEE, (I) AFTER BEING PRESENTED WITH INFORMATION INDICATING THAT A LICEN-
35 SEE OR A REGISTERED ENTITY IS CAUSING OR ENGAGING IN CONDUCT WHICH HAS
36 RESULTED IN PATIENT AND/OR CLIENT HARM AND IF IN THE COMMISSIONER'S
37 OPINION IT WOULD BE PREJUDICIAL TO THE INTERESTS OF THE PEOPLE TO DELAY
38 ACTION UNTIL AN OPPORTUNITY FOR A HEARING CAN BE PROVIDED IN ACCORDANCE
39 WITH THE PREHEARING AND HEARING PROVISIONS OF THIS SECTION; OR (II)
40 AFTER AN INVESTIGATION AND A RECOMMENDATION BY THE COMMISSIONER THAT
41 BASED UPON A DETERMINATION THAT A LICENSEE IS CAUSING OR ENGAGING IN
42 CONDUCT WHICH IN THE COMMISSIONER'S OPINION CONSTITUTES AN IMMINENT
43 DANGER TO THE HEALTH AND/OR SAFETY OF THE PEOPLE, AND THAT IT THEREFORE
44 APPEARS TO BE PREJUDICIAL TO THE INTERESTS OF THE PEOPLE TO DELAY ACTION
45 UNTIL AN OPPORTUNITY FOR A HEARING CAN BE PROVIDED IN ACCORDANCE WITH
46 THE PREHEARING AND HEARING PROVISIONS OF THIS SECTION; THE COMMISSIONER
47 MAY ORDER THE LICENSEE, BY WRITTEN NOTICE, TO DISCONTINUE SUCH DANGEROUS
48 CONDUCT, WHICH SHALL INCLUDE THE SUSPENSION OF ANY PRIVILEGES TO PRAC-
49 TICE THE PROFESSION PURSUANT TO THIS TITLE IN THE STATE OF NEW YORK, OR
50 TAKE CERTAIN ACTION IMMEDIATELY AND FOR A PERIOD OF NINETY DAYS FROM THE
51 DATE OF SERVICE OF THE ORDER. WITHIN TEN DAYS FROM THE DATE OF SERVICE
52 OF SUCH ORDER, THE DEPARTMENT SHALL REGULARLY SCHEDULE SUCH HEARING
53 PROCEEDINGS AS REQUIRED BY THIS SECTION, PROVIDED, HOWEVER, THAT THE
54 HEARING SHALL BE COMPLETED WITHIN NINETY DAYS OF THE DATE OF SERVICE OF
55 THE ORDER. TO THE EXTENT THAT THE ISSUE OF IMMINENT DANGER OR HARM CAN
56 BE PROVEN WITHOUT THE ATTORNEY REPRESENTING THE DEPARTMENT PUTTING IN

1 ITS ENTIRE CASE, THE COMMISSIONER SHALL FIRST DETERMINE WHETHER BY A
2 PREPONDERANCE OF THE EVIDENCE THE LICENSEE IS CAUSING, ENGAGING IN OR
3 MAINTAINING A CONDITION OR ACTIVITY WHICH CONSTITUTES AN IMMINENT DANGER
4 OR HARM TO THE HEALTH OF THE PEOPLE. THE ATTORNEY REPRESENTING THE
5 DEPARTMENT SHALL HAVE THE BURDEN OF GOING FORWARD AND PROVING BY A
6 PREPONDERANCE OF THE EVIDENCE THAT THE LICENSEE'S CONDUCT, ACTIVITY OR
7 PRACTICE RESULTED IN PATIENT OR CLIENT HARM, OR SUCH PRACTICE CONSTI-
8 TUTES AN IMMINENT DANGER TO THE HEALTH AND/OR SAFETY OF THE PEOPLE. THE
9 LICENSEE SHALL HAVE AN OPPORTUNITY TO BE HEARD AND TO PRESENT PROOF.
10 WHEN BOTH THE DEPARTMENT AND THE LICENSEE HAVE COMPLETED THEIR CASES
11 WITH RESPECT TO THE QUESTION OF HARM OR IMMINENT DANGER, THE COMMISSION-
12 ER OR HIS OR HER DESIGNEE SHALL PROMPTLY MAKE A RECOMMENDATION TO A
13 SINGLE MEMBER OF THE BOARD OF REGENTS, APPOINTED BY THE CHANCELLOR OF
14 THE BOARD OF REGENTS OR HIS OR HER DESIGNEE, ON THE ISSUE OF HARM OR
15 IMMINENT DANGER AND DETERMINE WHETHER THE SUMMARY ORDER SHOULD BE LEFT
16 IN EFFECT, MODIFIED OR VACATED, AND CONTINUE THE HEARING ON ALL THE
17 REMAINING CHARGES, IF ANY, IN ACCORDANCE WITH THE PROVISIONS OF THIS
18 SECTION. WITHIN TEN DAYS OF THE COMMISSIONER OR HIS OR HER DESIGNEE'S
19 RECOMMENDATION, THE SINGLE MEMBER OF THE BOARD OF REGENTS, AS APPOINTED
20 BY THE CHANCELLOR OF THE BOARD OF REGENTS OR HIS OR HER DESIGNEE, SHALL
21 DETERMINE WHETHER OR NOT TO ADOPT THE RECOMMENDATIONS OF THE COMMISSION-
22 ER OR HIS OR HER HER DESIGNEE, IN WHOLE OR IN PART, AND SHALL LEAVE IN
23 EFFECT, MODIFY OR VACATE THE SUMMARY ORDER. WHERE THE ORDER OF THE
24 COMMISSIONER REMAINS IN EFFECT EITHER IN WHOLE OR IN PART, A HEARING ON
25 THE REMAINING CHARGES OF PROFESSIONAL MISCONDUCT SHALL BE COMMENCED
26 PURSUANT TO THE PROVISIONS OF THIS SECTION. THE DEPARTMENT MUST MAKE A
27 REASONABLE EFFORT TO AVOID ANY DELAY IN COMPLETING AND DETERMINING SUCH
28 PROCEEDINGS. IF, AT THE CONCLUSION OF THE INITIAL HEARING, (I) THE
29 SINGLE BOARD MEMBER OF THE BOARD OF REGENTS DETERMINES THAT THE BASIS OF
30 THE CHARGES CONSTITUTED IMMINENT DANGER OR HARM AND THAT THE SUMMARY
31 ORDER SHALL CONTINUE, AND (II) THE NINETY DAY TERM OF THE ORDER HAS NOT
32 EXPIRED, THE SUMMARY ORDER SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL A
33 FINAL DECISION HAS BEEN RENDERED BY THE BOARD OF REGENTS PURSUANT TO THE
34 APPLICABLE PROVISIONS OF THIS SECTION. NOTWITHSTANDING ANY OTHER
35 PROVISION OF LAW TO THE CONTRARY, A SUMMARY ORDER SHALL BE PUBLIC UPON
36 ISSUANCE.

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

1 UNTIL THE FINAL DETERMINATION OF THE REGENTS REVIEW COMMITTEE, WHICH
2 SHALL COMMENCE WITHIN NINETY DAYS OF THE DATE OF SERVICE OF THE DEPART-
3 MENT'S ORDER AND OTHERWISE BE HELD IN ACCORDANCE WITH PARAGRAPH A OF
4 THIS SUBDIVISION.

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

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

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