

STATE OF NEW YORK

8909--A

IN SENATE

June 4, 2018

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to mandatory reporting of certain convictions, professional misconduct and/or adverse employment actions; and to amend the criminal procedure law, in relation to notice to the education department

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
2 299 of the laws of 2016, is amended to read as follows:

3 § 6501. Admission to a profession (licensing). 1. Admission to prac-
4 tice of a profession in this state is accomplished by a license being
5 issued to a qualified applicant by the [~~education~~] department. To quali-
6 fy for a license an applicant shall meet the requirements prescribed in
7 the article for the particular profession and shall meet the require-
8 ments prescribed in section 3-503 of the general obligations law.

9 2. Mandatory reporting of convictions, professional misconduct and/or
10 adverse employment actions.

11 a. For purposes of this subdivision:

12 (1) "Adverse employment action" means suspension or termination of
13 professional training, employment, or privileges and/or a voluntary or
14 involuntary resignation to avoid such actions, due to professional
15 misconduct, unprofessional conduct, incompetency undertaken by or on
16 behalf of a hospital, institution, or employer, for determined or admit-
17 ted misconduct directly related to the professional duties for which the
18 licensee was licensed.

19 (2) "Crime" means a misdemeanor or felony under:

20 (i) New York state law;

21 (ii) federal law; or

22 (iii) the law of another jurisdiction and which, if committed within
23 this state, would have constituted a crime under New York state law.

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

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1 (3) "Criminal history record" means a record of all convictions of
2 crimes and any pending criminal charges maintained on an individual by
3 the division of criminal justice and the federal bureau of investi-
4 gation.

5 (4) "Entry of a judgment of conviction" means the date on which
6 sentence, including but not limited to imprisonment, a term of
7 probation, or a fine, was imposed or, if no such sentence was imposed,
8 the date the judgment of conviction was entered in the court in which
9 the case was determined.

10 (5) "Licensee" shall mean a person registered, certified, or licensed
11 under this title. However, this definition shall not apply to discipli-
12 nary proceedings in relation to the profession of medicine, physician's
13 assistants, and specialist assistants, who are under the jurisdiction of
14 the office of professional medical conduct pursuant to the provisions of
15 title II-A of article two of the public health law.

16 b. (1) All licensees under this title shall be required to report to
17 the department any conviction of a crime in any jurisdiction within
18 thirty days after the entry of a judgment of conviction.

19 (2) All licensees under this title shall be required to report to the
20 department any determination of professional misconduct in any jurisdic-
21 tion within thirty days after notification of such determination of
22 professional misconduct was received by such individual.

23 (3) All licensees under this title shall be required to report to the
24 department any adverse employment action in any jurisdiction within
25 thirty days after notification of the imposition of such adverse employ-
26 ment action was received by such individual.

27 (4) The department shall provide licensees with notice of the report-
28 ing requirements and procedures for reporting described in this subdivi-
29 sion by prominently posting said requirements on the department's
30 website and including information regarding said requirements conspicu-
31 ously on the application for licensure form and each registration
32 renewal form.

33 (5) Willful failure of a licensee to submit a report to the department
34 within such thirty day period may be grounds for professional misconduct
35 pursuant to section sixty-five hundred of this article.

36 (6) The reporting requirements of this subdivision shall only apply to
37 convictions, professional misconduct and adverse employment actions that
38 occur on or after the effective date of this subdivision.

39 (7) A licensee shall submit a report to the department pursuant to
40 this subdivision on a form prescribed by the commissioner. Such form
41 shall be made publicly available on the department's website.

42 c. All reports submitted pursuant to this subdivision shall be consid-
43 ered part of the investigatory file and confidential pursuant to subdivi-
44 sion eight of section sixty-five hundred ten of this article.

45 d. Upon receipt of a report from a licensee that the licensee has been
46 convicted of a crime, or is the subject of a determination of profes-
47 sional misconduct or an adverse employment action, the department may
48 refer the report to the professional conduct officer for an investi-
49 gation and potential disciplinary action pursuant to section sixty-five
50 hundred ten of this article.

51 e. In the event that a licensee is convicted of a crime, the district
52 attorney shall provide notice thereof to the commissioner pursuant to
53 section 440.55 of the criminal procedure law. Upon receipt of a report
54 from a district attorney that a licensee has been convicted of a crime,
55 the department may refer the report to the professional conduct officer

1 for an investigation and potential disciplinary action pursuant to
2 section sixty-five hundred ten of this article.

3 f. Upon notification that a licensee has been convicted of a crime
4 under this section, the department may request a criminal history record
5 from the division of criminal justice services, and the division of
6 criminal justice services shall forward such criminal history record to
7 the department in a timely manner. The consideration of a criminal
8 history record by the department shall be in a manner consistent with
9 article twenty-three-A of the correction law.

10 3. a. Notwithstanding any provision of law to the contrary, any appli-
11 cant seeking to qualify for a license pursuant to this title who is the
12 spouse of an active duty member of the armed forces of the United
13 States, national guard or reserves as defined in 10 U.S.C. sections 1209
14 and 1211, and such spouse is transferred by the military to this state
15 shall be afforded an expedited review of his or her application for
16 licensure. Such application shall be on a form prescribed by the depart-
17 ment and shall include an attestation by the applicant of the military
18 status of his or her spouse and any other such supporting documentation
19 that the department may require. Upon review of such application, the
20 department shall issue a license to the applicant if the applicant holds
21 a license in good standing in another state and in the opinion of the
22 department, the requirements for licensure of such other state are
23 substantially equivalent to the requirements for licensure in this
24 state.

25 b. In addition to the expedited review granted in paragraph a of this
26 subdivision, an applicant who provides satisfactory documentation that
27 he or she holds a license in good standing from another state, may
28 request the issuance of a temporary practice permit, which, if granted
29 will permit the applicant to work under the supervision of a New York
30 state licensee in accordance with regulations of the commissioner. The
31 department may grant such temporary practice permit when it appears
32 based on the application and supporting documentation received that the
33 applicant will meet the requirements for licensure in this state because
34 he or she holds a license in good standing from another state with
35 significantly comparable licensure requirements to those of this state,
36 except the department has not been able to secure direct source verifi-
37 cation of the applicant's underlying credentials (e.g., receipt of
38 original transcript, experience verification). Such permit shall be
39 valid for six months or until ten days after notification that the
40 applicant does not meet the qualifications for licensure. An additional
41 six months may be granted upon a determination by the department that
42 the applicant is expected to qualify for the full license upon receipt
43 of the remaining direct source verification documents requested by the
44 department in such time period and that the delay in providing the
45 necessary documentation for full licensure was due to extenuating
46 circumstances which the military spouse could not avoid.

47 c. A temporary practice permit issued under paragraph b of this subdivi-
48 sion shall be subject to the full disciplinary and regulatory authori-
49 ty of the board of regents and the department, pursuant to this title,
50 as if such authorization were a professional license issued under this
51 article.

52 d. The department shall reduce the initial licensure application fee
53 by one-half for any application submitted by a military spouse under
54 this subdivision.

55 § 2. Subdivisions 4 and 5 of section 6608-b of the education law,
56 subdivision 4 as amended by chapter 300 of the laws of 2006 and subdivi-

sion 5 as amended by chapter 565 of the laws of 1995, are amended and a new subdivision 6 is added to read as follows:

(4) Education and experience: (A) have received a high school diploma, or its equivalent, and (B) have successfully completed, in accordance with the commissioner's regulations, (i) an approved one-year course of study in dental assisting in a degree-granting institution or a board of cooperative educational services program which includes at least two hundred hours of clinical experience, or an equivalent approved course of study in dental assisting in a non-degree granting institution which shall not be a professional association or professional organization or (ii) an alternate course of study in dental assisting acceptable to the department which shall be provided by a degree-granting institution or a board of cooperative educational services program which includes at least one thousand hours of relevant work experience; ~~[and]~~

(5) Examination: pass an examination given by an organization which administers examinations for certifying dental assistants and which is acceptable to the department~~[+]~~; and

(6) Character: be of good moral character as determined by the department.

§ 3. Subdivision 5 of section 8004 of the education law, as added by chapter 635 of the laws of 1991, is amended and a new subdivision 6 is added to read as follows:

5. Be at least eighteen years of age~~[+]~~; and

6. Be of good moral character as determined by the department.

§ 4. Subdivisions 5 and 6 of section 8355 of the education law, as added by chapter 798 of the laws of 1992, are amended to read as follows:

5. Age: be at least twenty-one years of age; ~~[and]~~

6. Character: be of good moral character as determined by the department; and

7. Fees: pay a fee for an initial certificate of one hundred dollars to the department; and a fee of fifty dollars for each triennial registration period.

§ 5. Subdivision 6 of section 8705 of the education law is renumbered subdivision 7 and a new subdivision 6 is added to read as follows:

6. Character: be of good moral character as determined by the department; and

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

10. Summary suspension and expedited hearing.

a. For the purposes of this subdivision only:

(1) "Date of service" means the date on which the licensee or registered entity receives a document from the department by registered or certified mail or by personal service.

(2) "Department officer" shall mean an employee of the department with significant programmatic, policy and supervisory responsibility, who is not an attorney who presents cases on behalf of the department in proceedings under this subdivision.

b. Notice of hearing and summary suspension order.

i. Whenever the commissioner or deputy commissioner for the professions determines after an investigation and a recommendation by the professional conduct officer that the public health, safety or welfare imperatively requires emergency action against a professional license, certificate, registration, permit or other authorization of the licensee or registered entity under this title, the commissioner or deputy commissioner for the professions may notify such licensee or

1 registered entity that a hearing will be conducted to determine if a
2 summary suspension order shall be issued, or the commissioner or deputy
3 commissioner for the professions may issue a summary suspension order,
4 suspending such licensee or registered entity's privileges to practice
5 such profession pursuant to this title in the state of New York, imme-
6 diately or as of a specified future date. Except as provided in subpara-
7 graph ii of this paragraph, such summary suspension order may remain in
8 effect until a final determination is made by the board of regents
9 pursuant to this subdivision. Notwithstanding any other provision of law
10 to the contrary, the department shall make such summary suspension order
11 available to the licensee or registered entity and shall indicate such
12 summary suspension on the department's website on the verification of
13 licenses page.

14 ii. The commissioner or deputy commissioner for the professions may at
15 any time, before a final determination is made under this subdivision,
16 vacate such summary suspension order pursuant to this subdivision if the
17 public health, safety or welfare no longer imperatively requires emer-
18 gency action against a professional license, certificate, registration,
19 permit or other authorization of the licensee or registered entity to
20 practice under this title.

21 c. Order proceedings.

22 i. Proceedings shall be commenced by service of the summary suspension
23 order, if any, a statement of the charges including the facts and
24 circumstances that are alleged to justify the hearing or summary suspen-
25 sion order, and a notice of hearing, which shall be served on the licen-
26 see or registered entity pursuant to paragraph f of subdivision one of
27 this section.

28 ii. (1) The department shall schedule a hearing to commence no less
29 than ten nor more than forty-five days after the date of service of the
30 notice of hearing and summary suspension order, if any, and statement of
31 charges, unless otherwise requested or consented to by the licensee or
32 registered entity, before a public health and safety discipline review
33 committee. Such committee shall consist of at least three members, at
34 least one of whom shall be a regent, at least one of whom shall be a
35 member of the applicable state board regulating such profession, and the
36 remaining member may be either a regent or a department officer. The
37 summary suspension order, if any, statement of charges and notice of
38 hearing shall be sent to the licensee or registered entity by registered
39 or certified mail or be personally served.

40 (2) The commissioner or deputy commissioner for the professions shall
41 designate an administrative officer, admitted to practice as an attorney
42 in the state of New York, who shall have the authority to rule on all
43 motions, procedures and other legal objections and shall draft a report
44 at the direction of such committee members, which shall be subject to
45 the approval of the members of the committee. The administrative officer
46 shall not be entitled to a vote, and such administrative officer's
47 report shall reflect the views of the committee members.

48 iii. The notice of hearing shall specify that the purpose of the hear-
49 ing is to determine whether a summary suspension order should be
50 imposed, continued, modified or discontinued until the completion of the
51 final disciplinary proceeding under subdivision three of this section or
52 whether such summary suspension order previously issued should be lifted
53 immediately. The notice of hearing shall also set forth:

54 (1) the time and place of the hearing, which, unless otherwise
55 requested or consented to by the licensee or registered entity, shall be
56 held in the regional office of the department in closest proximity to

1 the events alleged in the statement of charges provided, however, that
2 where it is not possible to conduct such hearing in such office within
3 the timeframe required by this subdivision, then: (i) such hearing may
4 be conducted in a regional office in close proximity to such events to
5 the greatest extent practicable; or (ii) one or more members of the
6 public health and safety review committee panel who are unable to phys-
7 ically appear at the location in closest proximity in the timeframes
8 required may participate in such hearing via videoconference technology
9 with the consent of all parties;

10 (2) that the licensee or registered entity may file a written response
11 to the statement of charges and accompanying evidence prior to the hear-
12 ing and in response to any recommendation made by the public health and
13 safety discipline review committee;

14 (3) that the licensee or registered entity may appear personally at
15 the hearing and may be represented by counsel;

16 (4) that the licensee or registered entity shall have the right to
17 produce witnesses and evidence on his or her behalf, to cross-examine
18 witnesses and examine evidence produced against the licensee or regis-
19 tered entity, and to issue subpoenas in accordance with the provisions
20 of the civil practice law and rules;

21 (5) that a stenographic record of the hearing will be made and be made
22 promptly available to the licensee or registered entity without charge;
23 and

24 (6) such other information as may be considered appropriate by the
25 department.

26 iv. The evidence in support of the charges shall be presented by an
27 attorney for the department. The licensee or registered entity shall
28 have the rights required to be stated in the notice of hearing. The
29 public health and safety review committee shall not be bound by the
30 rules of evidence. The hearing shall be completed within sixty days of
31 the date of service of the notice of hearing and summary suspension
32 order, if any. The committee shall establish a hearing schedule to
33 ensure that this expedited hearing is completed within the required
34 timeframes. The public health and safety committee, upon request, may
35 grant a limited and time specific adjournment to the department that
36 would extend the hearing beyond the sixty days if the committee deter-
37 mines that the delay is attributable to a circumstance or occurrence
38 substantially beyond the control of the department and an injustice
39 would result if the adjournment were not granted. The licensee or regis-
40 tered entity may request an adjournment at any time; such requests that
41 are reasonable shall be granted. A hearing which has been initiated
42 shall not be discontinued because of the death or incapacity to serve of
43 one member of the committee. The public health and safety committee
44 shall review the evidence and the hearing record and determine, whether
45 the department has shown, by a preponderance of the evidence, a summary
46 suspension order should be imposed, continued or modified because the
47 public health, safety or welfare imperatively requires emergency action
48 against the professional license, certificate, registration, permit or
49 other authorization of the licensee or registered entity to practice
50 under this title.

51 d. Results of hearing. The public health and safety committee shall
52 have fifteen days from the completion of the hearing to issue a written
53 recommendation as to whether a summary suspension order concerning such
54 licensee or registered entity shall be imposed, continued or modified
55 until completion of the final disciplinary proceeding under subdivision
56 three of this section or whether any such summary suspension order

1 previously imposed shall be lifted immediately. Such committee shall
2 promptly forward such recommendation to the board of regents. A copy of
3 such recommendation shall promptly be forwarded to the licensee or
4 registered entity, as the case may be, providing notice of the date on
5 which such recommendation will be considered by the board of regents.

6 e. At its next regularly scheduled meeting, or at a special meeting,
7 the board of regents shall consider the recommendation of the public
8 health and safety committee and the record before the public health and
9 safety discipline committee, as well as any response from the licensee
10 or registered entity, and make a final determination as to whether a
11 summary suspension order shall be imposed, continued or modified until
12 completion of a final disciplinary proceeding can be held pursuant to
13 subdivision three of this section or whether any summary suspension
14 order previously imposed shall be lifted immediately.

15 § 7. Subdivision 5 of section 6510 of the education law, as amended by
16 chapter 866 of the laws of 1980, is amended to read as follows:

17 5. Court review procedures. [~~The~~] A summary suspension order issued
18 by the commissioner or deputy commissioner for the professions pursuant
19 to subdivision ten of this section and the decisions of the board of
20 regents may be reviewed pursuant to the proceedings under article seven-
21 ty-eight of the civil practice law and rules. Such proceedings shall be
22 returnable before the appellate division of the third judicial depart-
23 ment, and such decisions shall not be stayed or enjoined except upon
24 application to such appellate division after notice to the department
25 and to the attorney general and upon a showing that the petitioner has a
26 substantial likelihood of success.

27 § 8. Section 440.55 of the criminal procedure law, as added by chapter
28 134 of the laws of 1996, is amended to read as follows:

29 § 440.55 Notice to education department where a licensed professional
30 has been convicted of a felony or misdemeanor.

31 The district attorney shall give written notification to the depart-
32 ment of education upon the conviction of a felony or misdemeanor of any
33 person holding a license pursuant to title eight of the education law.
34 In addition, the district attorney shall give written notification to
35 the department upon the vacatur or reversal of any felony or misdemeanor
36 conviction of any such person.

37 § 9. This act shall take effect on the one hundred eightieth day after
38 it shall have become a law.