

# STATE OF NEW YORK

9132

## IN SENATE

July 11, 2018

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, in relation to requiring certain health care providers to disclose the fact that the provider is on probation to current and new patients

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 6511-a  
2 to read as follows:

3 § 6511-a. Disclosure of probationary status. (1) The provisions of  
4 this section shall apply to any person licensed under the following  
5 articles of this title: one hundred thirty-one (medicine), one hundred  
6 thirty-one-B (physician assistants), one hundred thirty-two (chiroprac-  
7 tic), one hundred thirty-three (dentistry and dental hygiene), one  
8 hundred thirty-four (licensed perfusionists), one hundred thirty-six  
9 (physical therapy and physical therapist assistants), one hundred thir-  
10 ty-nine (nursing), one hundred forty (professional midwifery practice),  
11 one hundred forty-one (podiatry), one hundred forty-three (optometry),  
12 one hundred fifty-five (massage therapy), one hundred fifty-six (occupa-  
13 tional therapy), one hundred sixty (acupuncture), and one hundred  
14 sixty-four (respiratory therapists and respiratory therapy technicians).

15 (2) As used in this section:

16 (a) "licensee" means any person licensed to practice a profession  
17 governed by the articles of this title listed in subdivision one of this  
18 section; and

19 (b) "state board" means the state board for each profession governed  
20 by the articles of this title listed in subdivision one of this section  
21 and appointed by the board of regents pursuant to section sixty-five  
22 hundred eight of this article.

23 (3) Except as provided by subdivision five of this section, the  
24 department and the applicable state board shall require a licensee to  
25 disclose the following on a separate document: his or her probationary  
26 status; the cause or causes for probation alleged in the accusation, the  
27 statement of the issues, or the legal conclusions of an administrative

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

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1 law judge; the length of the probation and the end date; all practice  
2 restrictions placed on the licensee by the board; the address of the  
3 applicable state board's internet website; and the applicable state  
4 board's telephone number to a current or new patient, the patient's  
5 guardian or the patient's health care surrogate prior to the patient's  
6 first visit following the probationary order while the licensee is on  
7 probation pursuant to a probationary order made after January first, two  
8 thousand eighteen, in any of the circumstances listed in paragraph (a),  
9 (b), (c) or (d) of this subdivision. Such written disclosure shall be  
10 provided to the patient, the patient's guardian or the patient's health  
11 care surrogate in the licensee's office prior to the time the patient  
12 enters the examination room and the examination or treatment commences.  
13 The licensee shall provide the disclosure under the following circum-  
14 stances:

15 (a) An accusation against the licensee alleges, a complaint filed  
16 against the licensee indicates, or the legal conclusions of an adminis-  
17 trative law judge find that the licensee is implicated in any of the  
18 following:

- 19 (i) gross negligence;  
20 (ii) repeated negligent acts involving a departure from the standard  
21 of care with multiple patients;  
22 (iii) drug or alcohol abuse that threatens to impair a licensee's  
23 ability to render patient care safely, including practicing under the  
24 influence of drugs or alcohol;  
25 (iv) felony conviction arising from or occurring during patient care  
26 or treatment; or  
27 (v) mental illness or other cognitive impairment that impedes a  
28 licensee's ability to safely render patient care.

29 (b) The applicable state board ordered any of the following in  
30 conjunction with placing the licensee on probation:

- 31 (i) that a third-party chaperone be present when the licensee examines  
32 patients as a result of sexual misconduct;  
33 (ii) that the licensee submit to drug testing as a result of drug or  
34 alcohol abuse; and/or  
35 (iii) that the licensee have a monitor.

36 (c) The licensee has not successfully completed a training program or  
37 any associated examinations required by the board as a condition of  
38 probation.

39 (d) The licensee has been on probation more than once.

40 (4) The licensee shall obtain from each patient a signed receipt  
41 following the disclosure described in subdivision three of this section  
42 that includes a written explanation of how the patient can find further  
43 information on the licensee's probation on the applicable state board's  
44 internet website.

45 (5) The licensee shall not be required to provide the disclosure prior  
46 to the visit as required by subdivision three of this section if the  
47 visit occurs in an emergency room, the patient is incapacitated, and the  
48 patient's guardian or the patient's health care surrogate is not pres-  
49 ent.

50 (6) If a patient, the patient's guardian, or the patient's health care  
51 surrogate elects to cancel the patient's appointment with the licensee  
52 upon being provided with the disclosure required by subdivision three of  
53 this section, neither the patient nor the patient's insurance company  
54 shall be charged for the appointment.

55 (7) Any person who violates the provisions of this section shall be  
56 subject to a penalty not to exceed two thousand dollars. Any person who

1 commits subsequent, willful violations of the provisions of this section  
2 shall have his or her license suspended for a period of time to be  
3 determined by the commissioner.

4 § 2. This act shall take effect on the one hundred eightieth day after  
5 it shall have become a law and shall apply to all probationary orders  
6 issued on or after January 1, 2019. Effective immediately, the addition,  
7 amendment and/or repeal of any rule or regulation necessary for the  
8 implementation of this act on its effective date are authorized and  
9 directed to be made and completed on or before such effective date.