

STATE OF NEW YORK

1380

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sens. LAVALLE, HANNON -- read twice and ordered printed,
and when printed to be committed 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 profes-
sional licenses

The People of the State of New York, represented in Senate and Assem-
bly, 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:

§ 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 licen-
sure 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, acquit-
tals or dismissed charges. Licensees shall also report to the department
within thirty days any charges of professional misconduct in any juris-
diction and/or any adverse actions undertaken by a hospital, institution

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

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1 or employer as a result of the licensee's professional duties. Failure
2 of a licensee to provide such a report to the department within thirty
3 days of the action, shall be grounds for professional misconduct pursu-
4 ant to section sixty-five hundred ten of this article.

5 b. The department shall promulgate a form to be provided to all licen-
6 sees by which they must report charges as defined in paragraph a of this
7 subdivision.

8 c. All such records processed and submitted pursuant to this subdivi-
9 sion shall be confidential pursuant to the applicable federal and state
10 laws, rules and regulations, and shall not be published or in any way
11 disclosed to persons other than the department personnel, unless other-
12 wise authorized by law. No cause of action against the commissioner, the
13 department or the division of criminal justice services for damages
14 related to the dissemination of records pursuant to this subdivision
15 shall exist when the commissioner, department or division of criminal
16 justice services have reasonably and in good faith relied upon the accu-
17 racy and completeness of information furnished to it by the licensee or
18 qualified agencies.

19 d. Upon receipt of a report from a licensee that they have been the
20 subject of a criminal conviction or disciplinary action, the department
21 may refer the report to the professional conduct officer for an investi-
22 gation of potential disciplinary action under the applicable provisions
23 of this section.

24 e. In the event that a licensee is convicted of any crime, the
25 district attorney shall provide notice thereof to the commissioner.
26 Upon receiving notice of a conviction from a district attorney pursuant
27 to this paragraph, the commissioner shall, without delay, proceed to
28 determine whether the individual possesses good moral character, in
29 accordance with the regulations of the commissioner. Nothing in this
30 article shall be construed as creating any authority to take an adverse
31 action against a licensee by virtue of a report pursuant to this para-
32 graph which has not been substantiated.

33 § 1-a. Section 6501 of the education law, as amended by chapter 299 of
34 the laws of 2016, is amended to read as follows:

35 § 6501. Admission to a profession (licensing) and criminal history
36 records search. 1. Admission. Admission to practice of a profession in
37 this state is accomplished by a license being issued to a qualified
38 applicant by the education department. To qualify for a license an
39 applicant shall meet the requirements prescribed in the article for the
40 particular profession and shall meet the requirements prescribed in
41 section 3-503 of the general obligations law.

42 2. Licensing of military spouses. a. Notwithstanding any provision of
43 law to the contrary, any applicant seeking to qualify for a license
44 pursuant to this title who is the spouse of an active duty member of the
45 armed forces of the United States, national guard or reserves as defined
46 in 10 U.S.C. sections 1209 and 1211, and such spouse is transferred by
47 the military to this state shall be afforded an expedited review of his
48 or her application for licensure. Such application shall be on a form
49 prescribed by the department and shall include an attestation by the
50 applicant of the military status of his or her spouse and any other such
51 supporting documentation that the department may require. Upon review of
52 such application, the department shall issue a license to the applicant
53 if the applicant holds a license in good standing in another state and
54 in the opinion of the department, the requirements for licensure of such
55 other state are substantially equivalent to the requirements for lisen-
56 sure in this state.

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

c. A temporary practice permit issued under paragraph b of this subdivision shall be subject to the full disciplinary and regulatory authority of the board of regents and the department, pursuant to this title, as if such authorization were a professional license issued under this article.

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

3. 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.

4. 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 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

1 department or the division of criminal justice services for damages
2 related to the dissemination of records pursuant to this subdivision
3 shall exist when the commissioner, department or division of criminal
4 justice services have reasonably and in good faith relied upon the accu-
5 racy and completeness of information furnished to it by the licensee or
6 qualified agencies.

7 d. Upon receipt of a report from a licensee that they have been the
8 subject of a criminal conviction or disciplinary action, the department
9 may refer the report to the professional conduct officer for an investi-
10 gation of potential disciplinary action under the applicable provisions
11 of this section.

12 e. In the event that a licensee is convicted of any crime, the
13 district attorney shall provide notice thereof to the commissioner.
14 Upon receiving notice of a conviction from a district attorney pursuant
15 to this paragraph, the commissioner shall, without delay, proceed to
16 determine whether the individual possesses good moral character, in
17 accordance with the regulations of the commissioner. Nothing in this
18 article shall be construed as creating any authority to take an adverse
19 action against a licensee by virtue of a report pursuant to this para-
20 graph which has not been substantiated.

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

23 10. Summary action. a. Whenever the commissioner or his or her desiq-
24 nee, (i) after being presented with information indicating that a licen-
25 see or a registered entity is causing or engaging in conduct which has
26 resulted in patient and/or client harm and if in the commissioner's
27 opinion it would be prejudicial to the interests of the people to delay
28 action until an opportunity for a hearing can be provided in accordance
29 with the prehearing and hearing provisions of this section; or (ii)
30 after an investigation and a recommendation by the commissioner that
31 based upon a determination that a licensee is causing or engaging in
32 conduct which in the commissioner's opinion constitutes an imminent
33 danger to the health and/or safety of the people, and that it therefore
34 appears to be prejudicial to the interests of the people to delay action
35 until an opportunity for a hearing can be provided in accordance with
36 the prehearing and hearing provisions of this section; the commissioner
37 may order the licensee, by written notice, to discontinue such dangerous
38 conduct, which shall include the suspension of any privileges to prac-
39 tice the profession pursuant to this title in the state of New York, or
40 take certain action immediately and for a period of ninety days from the
41 date of service of the order. Within ten days from the date of service
42 of such order, the department shall regularly schedule such hearing
43 proceedings as required by this section, provided, however, that the
44 hearing shall be completed within ninety days of the date of service of
45 the order. To the extent that the issue of imminent danger or harm can
46 be proven without the attorney representing the department putting in
47 its entire case, the commissioner shall first determine whether by a
48 preponderance of the evidence the licensee is causing, engaging in or
49 maintaining a condition or activity which constitutes an imminent danger
50 or harm to the health of the people. The attorney representing the
51 department shall have the burden of going forward and proving by a
52 preponderance of the evidence that the licensee's conduct, activity or
53 practice resulted in patient or client harm, or such practice consti-
54 tutes an imminent danger to the health and/or safety of the people. The
55 licensee shall have an opportunity to be heard and to present proof.
56 When both the department and the licensee have completed their cases

1 with respect to the question of harm or imminent danger, the commission-
2 er or his or her designee shall promptly make a recommendation to a
3 single member of the board of regents, appointed by the chancellor of
4 the board of regents or his or her designee, on the issue of harm or
5 imminent danger and determine whether the summary order should be left
6 in effect, modified or vacated, and continue the hearing on all the
7 remaining charges, if any, in accordance with the provisions of this
8 section. Within ten days of the commissioner or his or her designee's
9 recommendation, the single member of the board of regents, as appointed
10 by the chancellor of the board of regents or his or her designee, shall
11 determine whether or not to adopt the recommendations of the commission-
12 er or his or her her designee, in whole or in part, and shall leave in
13 effect, modify or vacate the summary order. Where the order of the
14 commissioner remains in effect either in whole or in part, a hearing on
15 the remaining charges of professional misconduct shall be commenced
16 pursuant to the provisions of this section. The department must make a
17 reasonable effort to avoid any delay in completing and determining such
18 proceedings. If, at the conclusion of the initial hearing, (i) the
19 single board member of the board of regents determines that the basis of
20 the charges constituted imminent danger or harm and that the summary
21 order shall continue, and (ii) the ninety day term of the order has not
22 expired, the summary order shall remain in full force and effect until a
23 final decision has been rendered by the board of regents pursuant to the
24 applicable provisions of this section. Notwithstanding any other
25 provision of law to the contrary, a summary order shall be public upon
26 issuance.

27 b. When a licensee has pleaded or been found guilty or convicted of
28 committing an act constituting a felony under New York state law or
29 federal law, or the law of another jurisdiction which, if committed
30 within this state, would have constituted a felony under New York state
31 law, or when the duly authorized professional disciplinary agency of
32 another jurisdiction has made a finding substantially equivalent to a
33 finding that the practice of the profession by the licensee in that
34 jurisdiction constitutes an imminent danger to the health of its people,
35 or when a licensee has been disciplined by a duly authorized profes-
36 sional disciplinary agency of another jurisdiction for acts which if
37 committed in this state would have constituted the basis for summary
38 action by the department pursuant to paragraph a of this subdivision, a
39 single board member of the board of regents, appointed by the chancellor
40 of the board of regents or his or her designee, after a recommendation
41 by the commissioner or his or her designee, may order the licensee, by
42 written notice, to discontinue or refrain from practicing the profession
43 in whole or in part or to take certain immediate actions authorized
44 pursuant to this title. The order of the single member of the board of
45 regents shall constitute summary action against the licensee and become
46 public upon issuance. The summary suspension shall remain in effect
47 until the final determination of the regents review committee, which
48 shall commence within ninety days of the date of service of the depart-
49 ment's order and otherwise be held in accordance with paragraph a of
50 this subdivision.

51 c. Provided however, the provisions of this subdivision shall not
52 apply to individuals licensed under article one hundred thirty-one,
53 article one hundred thirty-one-B, and article one hundred thirty-one-C
54 of this title, who are regulated under the jurisdiction of the office of
55 professional medical conduct as defined in section two hundred thirty of
56 the public health law.

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

3 (8) Designate a professional conduct officer, who shall be the chief
4 administrative officer of the office of the professions, or his or her
5 designee, in connection with professional licensing and misconduct
6 proceedings and criminal matters, such officer to be empowered to issue
7 subpoenas and administer oaths in connection with such proceedings.
8 Notwithstanding any provision of law to the contrary, said professional
9 conduct officer, or his or her representatives, may examine and obtain
10 records of patients or clients in any investigation or proceeding by the
11 department acting within the scope of its authorization. Unless express
12 consent is obtained from the patient or client, any information so
13 obtained shall be confidential and shall not be further disclosed except
14 to the extent necessary for the proper function of the department, and
15 the name of the patient or client may not be disclosed by the department
16 or its employees at any stage of the proceedings unless the patient or
17 client has expressly consented. Any other use or dissemination of infor-
18 mation from such records by any person by any means, unless it is pursu-
19 ant to a valid court order or otherwise authorized by law, shall be
20 prohibited;

21 § 4. This act shall take effect on the one hundred eightieth day after
22 it shall have become a law; provided, however, that section one-a of
23 this act shall take effect on the same date and in the same manner as
24 chapter 299 of the laws of 2016 takes effect.