STATE OF NEW YORK

1380--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to mandating reporting of convictions 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 299 of the laws of 2016, 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. **Licensing of military spouses.** a. Notwithstanding any provision of law to the contrary, any applicant seeking to qualify for a license pursuant to this title who is the spouse of an active duty member of the armed forces of the United States, national guard or reserves as defined in 10 U.S.C. sections 1209 and 1211, and such spouse is transferred by the military to this state shall be afforded an expedited review of his or her application for licensure. Such application shall be on a form prescribed by the department and shall include an attestation by the applicant of the military status of his or her spouse and any other such supporting documentation that the department may require. Upon review of such application, the department shall issue a license to the applicant if the applicant holds a license in good standing in another state and in the opinion of the department, the requirements for licensure of such

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

LBD07456-03-7

other state are substantially equivalent to the requirements for licensure 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. Mandatory reporting of convictions, professional misconduct and/or adverse employment actions.

a. For purposes of this subdivision:

(1) "Adverse employment action" means restriction or termination of professional training, employment or privileges and/or a voluntary or involuntary resignation to avoid such actions due to professional misconduct, unprofessional conduct, incompetency undertaken by or on behalf of a hospital, institution or employer for determined or admitted misconduct directly related to the professional duties for which the licensee was licensed.

(2) "Crime" means a misdemeanor or felony under (i) New York state law; (ii) federal law; or (iii) the law of another jurisdiction.

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

(4) "Licensee" shall mean a person registered, certified, or licensed under this title.

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

(2) All licensees shall be required to report to the department any determination of professional misconduct in any jurisdiction within

thirty days after such determination of professional misconduct was received by such individual.

(3) All licensees under this title shall be required to report any adverse employment action within thirty days after such adverse employment action was imposed on such individual.

(4) The department shall provide licensees with notice of the reporting requirements described in this subdivision by posting said requirements on the department's website and including information regarding said requirements on the application for licensure form and each registration renewal form.

(5) Willful failure of such a licensee to provide such a report to the department within such thirty day period may be grounds for professional misconduct pursuant to section sixty-five thousand ten of this article.

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

(7) A licensee shall submit a report to the department pursuant to this paragraph on a form prescribed by the commissioner, said form shall be made publicly available on the department's website.

c. All reports submitted pursuant to this subdivision shall be considered part of the investigatory file and shall be confidential pursuant to subdivision eight of section sixty-five thousand ten of this article.

d. Upon receipt of a report from a licensee that he or she has been convicted of a crime, or is the subject of a determination of professional misconduct and/or an adverse employment action, the department may refer the report to the professional conduct officer for an investigation and potential disciplinary action pursuant to section sixty-five hundred ten of this article.

e. In the event that a district attorney has knowledge that a licensed professional is convicted of a crime, the district attorney shall provide notice thereof to the commissioner. Upon receipt of a report from a district attorney that a licensee has been convicted of a crime, the department may refer the report to the professional conduct officer for an investigation and potential disciplinary action under the applicable provisions of section sixty-five hundred ten of this article.

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

§ 2. Subdivisions 4 and 5 of section 6608-b of the education law, subdivision 4 as amended by chapter 300 of the laws of 2006 and subdivision 5 as amended by chapter 565 of the laws of 1995, are amended to 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 to read 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.

§ 3-a. Subdivision 6 of section 8355 of the education law is renumbered subdivision 7.

§ 4. Subdivision 5 of section 8355 of the education law, as added by chapter 798 of the laws of 1992, is amended and a new subdivision 6 is added 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

§ 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. Summary suspension order.

i. Whenever the commissioner or his or her designee determines after an investigation and a recommendation by the professional conduct officer that a licensee or a registered entity is causing or engaging in conduct which constitutes an imminent danger to the public health and/or safety and that it would be prejudicial to delay action until an opportunity for a final disciplinary hearing can be provided in accordance with the provisions of subdivision three of this section; the commissioner or his or her designee may order the licensee or registered entity, by summary order, to discontinue such dangerous conduct, which shall include the suspension of any privileges to practice the profession pursuant to this article in the state of New York, immediately. Except as provided in subparagraph ii of this paragraph, such summary suspension may remain in effect until a final determination is made pursuant to this subdivision. Notwithstanding any other provision of law to the contrary, a summary order shall be public upon issuance.

ii. The commissioner may at any time, before a final determination is made under this subdivision, vacate such summary suspension order pursuant to this subdivision if he or she, in his or her opinion, is presented with clear and convincing evidence that the licensee or registered entity is no longer an imminent danger to the health and/or safety of the public.

b. Summary suspension proceedings.

i. Summary suspension proceedings shall be commenced by service of the summary order and a statement of the charges that were alleged to justify the summary suspension, which shall be served on the licensee or registered entity pursuant to paragraph f of subdivision one of this section.

ii. Within ten days from the date of service of the summary order and statement of charges, the department shall schedule a hearing before a public health and safety discipline review committee, which shall consist of at least three members, at least one of whom shall be a regent, at least one shall be a member of the applicable state board and the remaining member may be either a regent and/or a department officer and shall serve a notice of hearing upon the licensee. The commissioner or his or her designee shall designate an administrative officer, admitted to practice as an attorney in the state of New York, who shall have the authority to rule on all motions, procedures and other legal objections and shall draft a report at the direction of such committee members, which shall be subject to the approval of the members of the committee. The administrative officer shall not be entitled to a vote, and such administrative officer's report shall reflect the views of the committee members.

iii. The notice of hearing shall state that the purpose of the hearing is to determine whether the summary suspension should be continued or modified until the completion of the final disciplinary proceeding under subdivision three of this section or be lifted immediately. The notice of hearing shall also set forth: (1) the time and place of the hearing; (2) that the licensee or registered entity may file a written response to the statement of charges and accompanying evidence prior to the hearing; (3) that the licensee or registered entity may appear personally at the hearing and may be represented by counsel; (4) that the licensee or registered entity shall have the right to produce witnesses and evidence on his or her behalf, to cross-examine witnesses and examine evidence produced against him or her, and to issue subpoenas in accordance with the provisions of the civil practice law and rules; (5) that a stenographic record of the hearing will be made; and (6) such other information as may be considered appropriate by the department.

iv. The evidence in support of the charges shall be presented by an attorney for the department. The licensee or registered entity shall have the rights required to be stated in the notice of hearing. The public health and safety review committee shall not be bound by the rules of evidence. The hearing shall be completed within sixty days of the date of service of the summary order and statement of charges. The committee shall establish a hearing schedule to ensure that the expedited hearing is completed within the required timeframes. The public health and safety committee, upon request, may grant a limited and time specific adjournment to the department that would extend the hearing beyond the sixty days if the committee determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the department. The licensee or registered entity may request an adjournment at any time. A hearing which has been initiated shall not be discontinued because of the death or incapacity to serve of one member of the committee. The public health and safety committee shall review the evidence and the hearing record and determine if, whether based on a preponderance of the evidence, the summary suspension should be continued or modified based on a determination as to whether the licensee or registered entity has caused or engaged in conduct that constituted an imminent danger to the public health and/or safety of the public and that it would be prejudicial to the public to delay action until an opportunity for a final disciplinary hearing pursuant to subdivision three of this section can be held or if the summary suspension shall be lifted immediately.

e. The public health and safety committee shall have fifteen days from the completion of the hearing to issue a written recommendation as to whether the licensee's or registered entity's summary suspension shall be continued or modified until completion of the final disciplinary proceeding under subdivision three of this section or whether his or her summary suspension shall be lifted immediately and shall promptly forward such recommendation to the board of regents.

f. At its next regularly scheduled meeting or at a special meeting, the board of regents shall consider the recommendation of the public health and safety committee and the record before the public health and safety discipline committee, and make a final determination as to whether the licensee's summary suspension shall be continued or modified until completion of a final disciplinary proceeding can be held pursuant to subdivision three of this section or whether his or her summary suspension shall be lifted immediately.

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

5. Court review procedures. [~~The~~] A summary suspension order issued by the commissioner or his/her designee issued pursuant to subdivision ten of this section and the decisions of the board of regents may be reviewed pursuant to the proceedings under article seventy-eight of the civil practice law and rules. Such proceedings shall be returnable before the appellate division of the third judicial department, and such decisions shall not be stayed or enjoined except upon application to such appellate division after notice to the department and to the attorney general and upon a showing that the petitioner has a substantial likelihood of success.

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