

# 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:

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

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1 other state are substantially equivalent to the requirements for licensure in this state.

2  
3 b. In addition to the expedited review granted in paragraph a of this  
4 subdivision, an applicant who provides satisfactory documentation that  
5 he or she holds a license in good standing from another state, may  
6 request the issuance of a temporary practice permit, which, if granted  
7 will permit the applicant to work under the supervision of a New York  
8 state licensee in accordance with regulations of the commissioner. The  
9 department may grant such temporary practice permit when it appears  
10 based on the application and supporting documentation received that the  
11 applicant will meet the requirements for licensure in this state because  
12 he or she holds a license in good standing from another state with  
13 significantly comparable licensure requirements to those of this state,  
14 except the department has not been able to secure direct source verification of the applicant's underlying credentials (e.g., receipt of  
15 original transcript, experience verification). Such permit shall be  
16 valid for six months or until ten days after notification that the  
17 applicant does not meet the qualifications for licensure. An additional  
18 six months may be granted upon a determination by the department that  
19 the applicant is expected to qualify for the full license upon receipt  
20 of the remaining direct source verification documents requested by the  
21 department in such time period and that the delay in providing the  
22 necessary documentation for full licensure was due to extenuating  
23 circumstances which the military spouse could not avoid.

24  
25 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  
26  
27  
28  
29 article.

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

33 3. Mandatory reporting of convictions, professional misconduct and/or  
34 adverse employment actions.

35 a. For purposes of this subdivision:

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

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

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

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

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

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

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

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

6 (4) The department shall provide licensees with notice of the report-  
7 ing requirements described in this subdivision by posting said require-  
8 ments on the department's website and including information regarding  
9 said requirements on the application for licensure form and each regis-  
10 tration renewal form.

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

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

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

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

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

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

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

43 § 2. Subdivisions 4 and 5 of section 6608-b of the education law,  
44 subdivision 4 as amended by chapter 300 of the laws of 2006 and subdivi-  
45 sion 5 as amended by chapter 565 of the laws of 1995, are amended to and  
46 a new subdivision 6 is added to read as follows:

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

1 board of cooperative educational services program which includes at  
2 least one thousand hours of relevant work experience[ ~~and~~]

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

6 (6) Character: be of good moral character as determined by the depart-  
7 ment.

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

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

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

13 § 3-a. Subdivision 6 of section 8355 of the education law is renum-  
14 bered subdivision 7.

15 § 4. Subdivision 5 of section 8355 of the education law, as added by  
16 chapter 798 of the laws of 1992, is amended and a new subdivision 6 is  
17 added to read as follows:

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

19 (6) Character: be of good moral character as determined by the depart-  
20 ment; and

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

23 (6) Character: be of good moral character as determined by the depart-  
24 ment; and

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

27 10. Summary suspension and expedited hearing.

28 a. Summary suspension order.

29 i. Whenever the commissioner or his or her designee determines after  
30 an investigation and a recommendation by the professional conduct offi-  
31 cer that a licensee or a registered entity is causing or engaging in  
32 conduct which constitutes an imminent danger to the public health and/or  
33 safety and that it would be prejudicial to delay action until an oppor-  
34 tunity for a final disciplinary hearing can be provided in accordance  
35 with the provisions of subdivision three of this section; the commis-  
36 sioner or his or her designee may order the licensee or registered enti-  
37 ty, by summary order, to discontinue such dangerous conduct, which shall  
38 include the suspension of any privileges to practice the profession  
39 pursuant to this article in the state of New York, immediately. Except  
40 as provided in subparagraph ii of this paragraph, such summary suspen-  
41 sion may remain in effect until a final determination is made pursuant  
42 to this subdivision. Notwithstanding any other provision of law to the  
43 contrary, a summary order shall be public upon issuance.

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

50 b. Summary suspension proceedings.

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

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

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

32 iv. The evidence in support of the charges shall be presented by an  
33 attorney for the department. The licensee or registered entity shall  
34 have the rights required to be stated in the notice of hearing. The  
35 public health and safety review committee shall not be bound by the  
36 rules of evidence. The hearing shall be completed within sixty days of  
37 the date of service of the summary order and statement of charges. The  
38 committee shall establish a hearing schedule to ensure that the exped-  
39 ited hearing is completed within the required timeframes. The public  
40 health and safety committee, upon request, may grant a limited and time  
41 specific adjournment to the department that would extend the hearing  
42 beyond the sixty days if the committee determines that the delay is  
43 attributable to a circumstance or occurrence substantially beyond the  
44 control of the department. The licensee or registered entity may request  
45 an adjournment at any time. A hearing which has been initiated shall  
46 not be discontinued because of the death or incapacity to serve of one  
47 member of the committee. The public health and safety committee shall  
48 review the evidence and the hearing record and determine if, whether  
49 based on a preponderance of the evidence, the summary suspension should  
50 be continued or modified based on a determination as to whether the  
51 licensee or registered entity has caused or engaged in conduct that  
52 constituted an imminent danger to the public health and/or safety of the  
53 public and that it would be prejudicial to the public to delay action  
54 until an opportunity for a final disciplinary hearing pursuant to  
55 subdivision three of this section can be held or if the summary suspen-  
56 sion shall be lifted immediately.

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

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

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

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

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