

# 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-

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

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

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

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

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

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

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

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

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

29 6. Character: be of good moral character as determined by the depart-  
30 ment; and

31 7. Fees: pay a fee for an initial certificate of one hundred dollars  
32 to the department; and a fee of fifty dollars for each triennial regis-  
33 tration period.

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

36 6. Character: be of good moral character as determined by the depart-  
37 ment; and

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

40 10. Summary suspension and expedited hearing.

41 a. For the purposes of this subdivision only:

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

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

49 b. Notice of hearing and summary suspension order.

50 i. Whenever the commissioner or deputy commissioner for the  
51 professions determines after an investigation and a recommendation by  
52 the professional conduct officer that the public health, safety or  
53 welfare imperatively requires emergency action against a professional  
54 license, certificate, registration, permit or other authorization of the  
55 licensee or registered entity under this title, the commissioner or  
56 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.