

STATE OF NEW YORK

1184--A

Cal. No. 58

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. GLICK, FAHY, STIRPE, GRIFFIN, COLTON, WALCZYK -- read once and referred to the Committee on Higher Education -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the education law, in relation to mandatory reporting of certain convictions, professional misconduct and/or employment termination; 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:

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). 1. 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. Mandatory reporting of convictions, professional misconduct and/or employment termination.

a. For purposes of this subdivision:

(1) "Employment termination" means termination of employment and/or a voluntary or involuntary resignation to avoid such termination, 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

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

LBD05696-04-0

1 (iii) the law of another jurisdiction and which, if committed within
2 this state, would have constituted a crime under New York state law.

3 (3) "Criminal history record" means a record of all convictions of
4 crimes and any pending criminal charges maintained on an individual by
5 the division of criminal justice and the federal bureau of investi-
6 gation.

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

12 (5) "Licensee" shall mean a person registered, certified, or licensed
13 under this title. However, this definition shall not apply to discipli-
14 nary proceedings in relation to the profession of medicine, physician's
15 assistants, and specialist assistants, who are under the jurisdiction of
16 the office of professional medical conduct pursuant to the provisions of
17 title II-A of article two of the public health law.

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

21 (2) All licensees under this title shall be required to report to the
22 department any determination of professional misconduct in any jurisdic-
23 tion within thirty days after notification of such determination of
24 professional misconduct was received by such individual.

25 (3) All licensees under this title shall be required to report to the
26 department any employment termination in any jurisdiction within thirty
27 days after notification of such termination was received by such indi-
28 vidual.

29 (4) The department shall provide licensees with notice of the report-
30 ing requirements and procedures for reporting described in this subdivi-
31 sion by prominently posting said requirements on the department's
32 website and including information regarding said requirements conspicu-
33 ously on the application for licensure form and each registration
34 renewal form.

35 (5) Willful failure of a licensee to submit a report to the department
36 within such thirty day period may be grounds for professional misconduct
37 pursuant to section sixty-five hundred of this subarticle.

38 (6) The reporting requirements of this subdivision shall only apply to
39 convictions, professional misconduct and employment terminations that
40 occur on or after the effective date of this subdivision.

41 (7) A licensee shall submit a report to the department pursuant to
42 this subdivision on a form prescribed by the commissioner. Such form
43 shall be made publicly available on the department's website.

44 c. All reports submitted pursuant to this subdivision shall be consid-
45 ered part of the investigatory file and confidential pursuant to subdivi-
46 sion eight of section sixty-five hundred ten of this article.

47 d. Upon receipt of a report from a licensee that the licensee has been
48 convicted of a crime, or is the subject of a determination of profes-
49 sional misconduct or employment termination, the department may refer
50 the report to the professional conduct officer for an investigation and
51 potential disciplinary action pursuant to section sixty-five hundred ten
52 of this article.

53 e. In the event that a licensee is convicted of a crime, the district
54 attorney shall provide notice thereof to the commissioner pursuant to
55 section 440.55 of the criminal procedure law. Upon receipt of a report
56 from a district attorney that a licensee has been convicted of a crime,

1 the department may refer the report to the professional conduct officer
2 for an investigation and potential disciplinary action pursuant to
3 section sixty-five hundred ten of this article.

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

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

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

48 c. A temporary practice permit issued under paragraph b of this subdi-
49 vision shall be subject to the full disciplinary and regulatory authori-
50 ty of the board of regents and the department, pursuant to this title,
51 as if such authorization were a professional license issued under this
52 article.

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

§ 2. Subdivision 5 of section 8004 of the education law, as added by chapter 635 of the laws of 1991, is amended 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. Subdivisions 5 and 6 of section 8355 of the education law, as added by chapter 798 of the laws of 1992, are amended 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

7. Fees: pay a fee for an initial certificate of one hundred dollars to the department; and a fee of fifty dollars for each triennial registration period.

§ 4. 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

§ 5. 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. For the purposes of this subdivision only:

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

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

b. Notice of hearing and summary suspension order.

(1) Whenever the commissioner or deputy commissioner for the professions determines after an investigation and a recommendation by the professional conduct officer that the public health, safety or welfare imperatively requires emergency action against a professional license, certificate, registration, permit or other authorization of the licensee or registered entity under this title, the commissioner or deputy commissioner for the professions may notify such licensee or registered entity that a hearing will be conducted to determine if a summary suspension order shall be issued, or the commissioner or deputy commissioner for the professions may issue a summary suspension order, suspending such licensee or registered entity's privileges to practice such profession pursuant to this title in the state of New York, immediately or as of a specified future date. Except as provided in subparagraph two of this paragraph, such summary suspension order may remain in effect until a final determination is made by the board of regents pursuant to this subdivision. Notwithstanding any other provision of law to the contrary, the department shall make such summary suspension order available to the licensee or registered entity and shall indicate such summary suspension on the department's website on the verification of licenses page.

(2) The commissioner or deputy commissioner for the professions may at any time, before a final determination is made under this subdivision, vacate such summary suspension order pursuant to this subdivision if the public health, safety or welfare no longer imperatively requires emergency action against a professional license, certificate, registration,

1 permit or other authorization of the licensee or registered entity to
2 practice under this title.

3 c. Order proceedings.

4 (1) Proceedings shall be commenced by service of the summary suspen-
5 sion order, if any, a statement of the charges including the facts and
6 circumstances that are alleged to justify the hearing or summary suspen-
7 sion order, and a notice of hearing, which shall be served on the licen-
8 see or registered entity pursuant to paragraph f of subdivision one of
9 this section.

10 (2) (i) The department shall schedule a hearing to commence no less
11 than ten nor more than forty-five days after the date of service of the
12 notice of hearing and summary suspension order, if any, and statement of
13 charges, unless otherwise requested or consented to by the licensee or
14 registered entity, before a public health and safety discipline review
15 committee. Such committee shall consist of at least three members, at
16 least one of whom shall be a regent, at least one of whom shall be a
17 member of the applicable state board regulating such profession, and the
18 remaining member may be either a regent or a department officer. The
19 summary suspension order, if any, statement of charges and notice of
20 hearing shall be sent to the licensee or registered entity by registered
21 or certified mail or be personally served.

22 (ii) The commissioner or deputy commissioner for the professions shall
23 designate an administrative officer, admitted to practice as an attorney
24 in the state of New York, who shall have the authority to rule on all
25 motions, procedures and other legal objections and shall draft a report
26 at the direction of such committee members, which shall be subject to
27 the approval of the members of the committee. The administrative officer
28 shall not be entitled to a vote, and such administrative officer's
29 report shall reflect the views of the committee members.

30 (3) The notice of hearing shall specify that the purpose of the hear-
31 ing is to determine whether a summary suspension order should be
32 imposed, continued, modified or discontinued until the completion of the
33 final disciplinary proceeding under subdivision three of this section or
34 whether such summary suspension order previously issued should be lifted
35 immediately. The notice of hearing shall also set forth:

36 (i) the time and place of the hearing, which, unless otherwise
37 requested or consented to by the licensee or registered entity, shall be
38 held in the regional office of the department in closest proximity to
39 the events alleged in the statement of charges provided, however, that
40 where it is not possible to conduct such hearing in such office within
41 the timeframe required by this subdivision, then: (A) such hearing may
42 be conducted in a regional office in close proximity to such events to
43 the greatest extent practicable; or (B) one or more members of the
44 public health and safety review committee panel who are unable to phys-
45 ically appear at the location in closest proximity in the timeframes
46 required may participate in such hearing via videoconference technology
47 with the consent of all parties;

48 (ii) that the licensee or registered entity may file a written
49 response to the statement of charges and accompanying evidence prior to
50 the hearing and in response to any recommendation made by the public
51 health and safety discipline review committee;

52 (iii) that the licensee or registered entity may appear personally at
53 the hearing and may be represented by counsel;

54 (iv) that the licensee or registered entity shall have the right to
55 produce witnesses and evidence on his or her behalf, to cross-examine
56 witnesses and examine evidence produced against the licensee or regis-

1 tered entity, and to issue subpoenas in accordance with the provisions
2 of the civil practice law and rules;

3 (v) that a stenographic record of the hearing will be made and be made
4 promptly available to the licensee or registered entity without charge;
5 and

6 (vi) such other information as may be considered appropriate by the
7 department.

8 (4) The evidence in support of the charges shall be presented by an
9 attorney for the department. The licensee or registered entity shall
10 have the rights required to be stated in the notice of hearing. The
11 public health and safety review committee shall not be bound by the
12 rules of evidence. The hearing shall be completed within sixty days of
13 the date of service of the notice of hearing and summary suspension
14 order, if any. The committee shall establish a hearing schedule to
15 ensure that this expedited hearing is completed within the required
16 timeframes. The public health and safety committee, upon request, may
17 grant a limited and time specific adjournment to the department that
18 would extend the hearing beyond the sixty days if the committee deter-
19 mines that the delay is attributable to a circumstance or occurrence
20 substantially beyond the control of the department and an injustice
21 would result if the adjournment were not granted. The licensee or regis-
22 tered entity may request an adjournment at any time; such requests that
23 are reasonable shall be granted. A hearing which has been initiated
24 shall not be discontinued because of the death or incapacity to serve of
25 one member of the committee. The public health and safety committee
26 shall review the evidence and the hearing record and determine, whether
27 the department has shown, by a preponderance of the evidence, a summary
28 suspension order should be imposed, continued or modified because the
29 public health, safety or welfare imperatively requires emergency action
30 against the professional license, certificate, registration, permit or
31 other authorization of the licensee or registered entity to practice
32 under this title.

33 d. Results of hearing. The public health and safety committee shall
34 have fifteen days from the completion of the hearing to issue a written
35 recommendation as to whether a summary suspension order concerning such
36 licensee or registered entity shall be imposed, continued or modified
37 until completion of the final disciplinary proceeding under subdivision
38 three of this section or whether any such summary suspension order
39 previously imposed shall be lifted immediately. Such committee shall
40 promptly forward such recommendation to the board of regents. A copy of
41 such recommendation shall promptly be forwarded to the licensee or
42 registered entity, as the case may be, providing notice of the date on
43 which such recommendation will be considered by the board of regents.

44 e. At its next regularly scheduled meeting, or at a special meeting,
45 the board of regents shall consider the recommendation of the public
46 health and safety committee and the record before the public health and
47 safety discipline committee, as well as any response from the licensee
48 or registered entity, and make a final determination as to whether a
49 summary suspension order shall be imposed, continued or modified until
50 completion of a final disciplinary proceeding can be held pursuant to
51 subdivision three of this section or whether any summary suspension
52 order previously imposed shall be lifted immediately.

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

55 5. Court review procedures. [The] A summary suspension order issued
56 by the commissioner or deputy commissioner for the professions pursuant

1 to subdivision ten of this section and the decisions of the board of
2 regents may be reviewed pursuant to the proceedings under article seven-
3 ty-eight of the civil practice law and rules. Such proceedings shall be
4 returnable before the appellate division of the third judicial depart-
5 ment, and such decisions shall not be stayed or enjoined except upon
6 application to such appellate division after notice to the department
7 and to the attorney general and upon a showing that the petitioner has a
8 substantial likelihood of success.

9 § 7. Section 440.55 of the criminal procedure law, as added by chapter
10 134 of the laws of 1996, is amended to read as follows:

11 § 440.55 Notice to education department where a licensed professional
12 has been convicted of a felony or misdemeanor.

13 The district attorney shall give written notification to the depart-
14 ment of education upon the conviction of a felony or misdemeanor of any
15 person holding a license pursuant to title eight of the education law.
16 In addition, the district attorney shall give written notification to
17 the department upon the vacatur or reversal of any felony or misdemeanor
18 conviction of any such person.

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