

STATE OF NEW YORK

9034

IN SENATE

October 7, 2020

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, in relation to requiring certain health care providers to disclose the fact that the provider is on probation to current and new patients

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 6511-a
2 to read as follows:

3 § 6511-a. Disclosure of probationary status. (1) The provisions of
4 this section shall apply to any person licensed under the following
5 articles of this title: one hundred thirty-one (medicine), one hundred
6 thirty-one-B (physician assistants), one hundred thirty-two (chiroprac-
7 tic), one hundred thirty-three (dentistry and dental hygiene), one
8 hundred thirty-four (licensed perfusionists), one hundred thirty-six
9 (physical therapy and physical therapist assistants), one hundred thir-
10 ty-nine (nursing), one hundred forty (professional midwifery practice),
11 one hundred forty-one (podiatry), one hundred forty-three (optometry),
12 one hundred fifty-five (massage therapy), one hundred fifty-six (occupa-
13 tional therapy), one hundred sixty (acupuncture), and one hundred
14 sixty-four (respiratory therapists and respiratory therapy technicians).

15 (2) As used in this section:

16 (a) "licensee" means any person licensed to practice a profession
17 governed by the articles of this title listed in subdivision one of this
18 section; and

19 (b) "state board" means the state board for each profession governed
20 by the articles of this title listed in subdivision one of this section
21 and appointed by the board of regents pursuant to section sixty-five
22 hundred eight of this article.

23 (3) The department and the applicable state board shall require a
24 licensee to disclose the following on a separate document: his or her
25 probationary status; the cause or causes for probation alleged in the
26 accusation, the statement of the issues, or the legal conclusions of an
27 administrative law judge; the length of the probation and the end date;
28 all practice restrictions placed on the licensee by the board; the
29 address of the applicable state board's internet website; and the appli-
30 cable state board's telephone number to a current or new patient, the

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

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1 patient's guardian or the patient's health care surrogate prior to the
2 patient's first visit following the probationary order while the licen-
3 see is on probation pursuant to a probationary order made after January
4 first, two thousand twenty-one, in any of the circumstances listed in
5 paragraph (a), (b), (c) or (d) of this subdivision. Such written disclo-
6 sure shall be provided to the patient, the patient's guardian or the
7 patient's health care surrogate in the licensee's office prior to the
8 time the patient enters the examination room and the examination or
9 treatment commences. The licensee shall provide the disclosure under
10 the following circumstances:

11 (a) An accusation against the licensee alleges, a complaint filed
12 against the licensee indicates, or the legal conclusions of an adminis-
13 trative law judge find that the licensee is implicated in any of the
14 following:

15 (i) gross negligence;
16 (ii) repeated negligent acts involving a departure from the standard
17 of care with multiple patients;
18 (iii) drug or alcohol abuse that threatens to impair a licensee's
19 ability to render patient care safely, including practicing under the
20 influence of drugs or alcohol;
21 (iv) felony conviction arising from or occurring during patient care
22 or treatment; or
23 (v) mental illness or other cognitive impairment that impedes a
24 licensee's ability to safely render patient care.

25 (b) The applicable state board ordered any of the following in
26 conjunction with placing the licensee on probation:

27 (i) that a third-party chaperone be present when the licensee examines
28 patients as a result of sexual misconduct;
29 (ii) that the licensee submit to drug testing as a result of drug or
30 alcohol abuse; and/or
31 (iii) that the licensee have a monitor.

32 (c) The licensee has not successfully completed a training program or
33 any associated examinations required by the board as a condition of
34 probation.

35 (d) The licensee has been on probation more than once.

36 (4) The licensee shall obtain from each patient a signed receipt
37 following the disclosure described in subdivision three of this section
38 that includes a written explanation of how the patient can find further
39 information on the licensee's probation on the applicable state board's
40 internet website.

41 (5) If a patient, the patient's guardian, or the patient's health care
42 surrogate elects to cancel the patient's appointment with the licensee
43 upon being provided with the disclosure required by subdivision three of
44 this section, neither the patient nor the patient's insurance company
45 shall be charged for the appointment.

46 (6) Any person who violates the provisions of this section shall be
47 subject to a penalty not to exceed two thousand dollars. Any person who
48 commits subsequent, willful violations of the provisions of this section
49 shall have his or her license suspended for a period of time to be
50 determined by the commissioner.

51 § 2. This act shall take effect on the one hundred eightieth day after
52 it shall have become a law and shall apply to all probationary orders
53 issued on or after January 1, 2021. Effective immediately, the addition,
54 amendment and/or repeal of any rule or regulation necessary for the
55 implementation of this act on its effective date are authorized and
56 directed to be made and completed on or before such effective date.