STATE OF NEW YORK

2635

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

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:

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

§ 6511-a. Disclosure of probationary status. (1) The provisions of this section shall apply to any person licensed under the following articles of this title: one hundred thirty-one (medicine), one hundred thirty-one-B (physician assistants), one hundred thirty-two (chiropractic), one hundred thirty-three (dentistry and dental hygiene), one hundred thirty-four (licensed perfusionists), one hundred thirty-six (physical therapy and physical therapist assistants), one hundred thirty-nine (nursing), one hundred forty (professional midwifery practice), one hundred forty-one (podiatry), one hundred forty-three (optometry), one hundred fifty-five (massage therapy), one hundred fifty-six (occupational therapy), one hundred sixty (acupuncture), and one hundred sixty-four (respiratory therapists and respiratory therapy technicians).

(2) As used in this section:

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

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

(3) Except as provided by subdivision five of this section, the department and the applicable state board shall require a licensee to

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

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disclose the following on a separate document: his or her probationary status; the cause or causes for probation alleged in the accusation, the statement of the issues, or the legal conclusions of an administrative law judge; the length of the probation and the end date; all practice restrictions placed on the licensee by the board; the address of the applicable state board's internet website; and the applicable state board's telephone number to a current or new patient, the patient's guardian or the patient's health care surrogate prior to the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made after January first, two thousand nineteen, in any of the circumstances listed in paragraph (a), (b), (c) or (d) of this subdivision. Such written disclosure shall be provided to the patient, the patient's guardian or the patient's health care surrogate in the licensee's office prior to the time the patient enters the examination room and the examination or treatment commences. The licensee shall provide the disclosure under the following circumstances:

(a) An accusation against the licensee alleges, a complaint filed against the licensee indicates, or the legal conclusions of an administrative law judge find that the licensee is implicated in any of the following:

(i) gross negligence;

(ii) repeated negligent acts involving a departure from the standard of care with multiple patients;

(iii) drug or alcohol abuse that threatens to impair a licensee's ability to render patient care safely, including practicing under the influence of drugs or alcohol;

(iv) felony conviction arising from or occurring during patient care or treatment; or

(v) mental illness or other cognitive impairment that impedes a licensee's ability to safely render patient care.

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

(i) that a third-party chaperone be present when the licensee examines patients as a result of sexual misconduct;

(ii) that the licensee submit to drug testing as a result of drug or alcohol abuse; and/or

(iii) that the licensee have a monitor.

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

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

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

(5) The licensee shall not be required to provide the disclosure prior to the visit as required by subdivision three of this section if the visit occurs in an emergency room, the patient is incapacitated, and the patient's guardian or the patient's health care surrogate is not present.

(6) If a patient, the patient's guardian, or the patient's health care surrogate elects to cancel the patient's appointment with the licensee upon being provided with the disclosure required by subdivision three of

this section, neither the patient nor the patient's insurance company shall be charged for the appointment.

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

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all probationary orders issued on or after January 1, 2020. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.