

STATE OF NEW YORK

8050

2021-2022 Regular Sessions

IN ASSEMBLY

June 11, 2021

Introduced by M. of A. FAHY -- read once and referred 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:

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 to practice a health
5 care profession, and who provides direct patient care, under the follow-
6 ing articles of this title: one hundred thirty-one (medicine), one
7 hundred thirty-one-B (physician assistants), one hundred thirty-one-C
8 (specialist assistants), one hundred thirty-two (chiropractic), one
9 hundred thirty-three (dentistry, dental hygiene, and registered dental
10 assisting), one hundred thirty-four (licensed perfusionists), one
11 hundred thirty-six (physical therapy and physical therapist assistants),
12 one hundred thirty-seven (pharmacy), one hundred thirty-seven-A (regis-
13 tered pharmacy technicians), one hundred thirty-nine (nursing), one
14 hundred forty (professional midwifery practice), one hundred forty-one
15 (podiatry), one hundred forty-three (optometry), one hundred fifty-three
16 (psychology), one hundred fifty-four (social work), one hundred fifty-
17 five (massage therapy), one hundred fifty-six (occupational therapy),
18 one hundred fifty-seven (dietetics and nutrition), one hundred fifty-
19 nine (speech-language pathologists and audiologists), one hundred sixty
20 (acupuncture), one hundred sixty-two (athletic trainers), one hundred
21 sixty-three (mental health practitioners) and one hundred sixty-four
22 (respiratory therapists and respiratory therapy technicians).

23 (2) As used in this section:

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

LBD04365-05-1

1 (a) "licensee" means any person licensed, certified or authorized to
2 practice a health care profession governed by the articles of this title
3 listed in subdivision one of this section and who provides direct
4 patient care;

5 (b) "health care agent" means a health care agent designated by an
6 adult pursuant to article twenty-nine-C of the public health law;

7 (c) "health care surrogate" means an individual selected to complete
8 the probation notification form and to decide on behalf of the patient
9 whether or not the patient shall receive care from the licensee on
10 probation; the health care surrogate must be an adult and may be the
11 spouse or domestic partner, a child, a sibling, a parent, or a close
12 friend of the patient; and

13 (d) "reasonably available" means that a person to be contacted can be
14 contacted with diligent efforts by the licensee, another person acting
15 on behalf of the licensee, or the health care facility.

16 (3) Except as provided by subdivision five of this section, the board
17 of regents or office of professional misconduct shall require a licensee
18 who has been placed on probation to disclose the following on a separate
19 written document: his or her probationary status; the cause or causes
20 for probation stated in the order issued by the board of regents, the
21 office of professional misconduct, or the court; the length of the
22 probation and the end date; all practice restrictions placed on the
23 licensee by the board of regents, office of professional misconduct, or
24 the court; the address of the office of professional misconduct's or
25 office of the professions enforcement actions' internet website; and the
26 board of regents or office of professional misconduct's telephone number
27 to a current or new patient, or to the patient's guardian, health care
28 surrogate, or health care agent prior to the patient's first visit, or
29 prior to the patient receiving direct care from the licensee following
30 the probationary order and while the licensee is on probation pursuant
31 to a probationary order made on or after January first, two thousand
32 twenty-three, in any of the circumstances listed in paragraph (a), (b),
33 (c) or (d) of this subdivision. Such written disclosure shall be
34 provided to the patient, or to the patient's guardian, health care
35 surrogate, or health care agent in the licensee's office prior to the
36 patient entering the room where the licensee performs the examination,
37 diagnostic testing, procedure, treatment or other direct patient care;
38 or in a hospital, ambulatory care center, or other health care facility
39 prior to the licensee performing any examination, testing, procedure,
40 treatment, or other direct patient care. The licensee shall provide the
41 disclosure under the following circumstances:

42 (a) The licensee has been placed on probation, as ordered by the board
43 of regents, office of professional misconduct, or the court after being
44 implicated in any of the following:

45 (i) gross negligence or gross incompetence;

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

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

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

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

1 (b) The board of regents, office of professional misconduct, or the
2 court ordered any of the following in conjunction with placing the
3 licensee on probation:

4 (i) a third-party chaperone shall be present when the licensee exam-
5 ines patients as a result of sexual misconduct;

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

8 (iii) the licensee shall have a monitor.

9 (c) The licensee has not successfully completed a training program or
10 any associated examinations required by the board of regents, office of
11 professional misconduct, or the court as a condition of probation.

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

13 (4) The licensee shall obtain from each patient, or each patient's
14 guardian, health care surrogate, or health care agent, a signed receipt
15 following the disclosure described in subdivision three of this section
16 that includes a written explanation of how the patient can find further
17 information on the licensee's probation on the applicable office of
18 professional misconduct or office of the professions enforcement
19 actions' internet website.

20 (5) The licensee shall not be required to provide the disclosure prior
21 to performing an examination, diagnostic testing, procedure, treatment
22 or other direct patient care as required by subdivision three of this
23 section, if in the health care professional's judgment, an emergency
24 exists and the person is in immediate need of medical attention, and an
25 attempt to secure consent would result in delay of treatment which would
26 increase the risk to such person's life or health, or if the patient is
27 incapacitated and the patient's guardian, health care surrogate, or
28 health care agent is not reasonably available.

29 (6) Should a patient, or the patient's guardian, health care surro-
30 gate, or health care agent, elect to cancel the patient's appointment,
31 procedure, diagnostic testing, treatment or other direct patient care
32 with the licensee upon being provided with the disclosure required by
33 subdivision three of this section, neither the patient nor the patient's
34 insurance company shall be charged for the appointment.

35 (7) Any licensee who violates the provisions of this section shall be
36 subject to a penalty not to exceed two thousand dollars. Any licensee
37 who commits subsequent, willful violations of the provisions of this
38 section shall have his or her license suspended for a period of time to
39 be determined by the board of regents.

40 (8) The commissioner of health in consultation with the commissioner
41 shall promulgate regulations to implement the requirements of this
42 section, and shall issue forms set forth that shall be used to satisfy
43 the written requirement specified in this section.

44 § 2. This act shall take effect January 1, 2023 and shall apply to all
45 probationary orders issued on or after January 1, 2023. Effective imme-
46 diately, the addition, amendment and/or repeal of any rule or regulation
47 necessary for the implementation of this act on its effective date are
48 authorized to be made and completed on or before such effective date.