

STATE OF NEW YORK

310--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to requiring certain health care providers to disclose certain facts in regards to 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

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

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1 and appointed by the board of regents pursuant to section sixty-five
2 hundred eight of this article.

3 (3) The department and the applicable state board shall require a
4 licensee or, in the event that the patient's appointment is at a
5 location other than the licensee's practice, the licensee or the hospi-
6 tal or practice where the patient's appointment is occurring to disclose
7 the following on a separate document: the licensee's probationary
8 status; the cause or causes for probation in the statement of the issues
9 or the legal conclusions of an administrative law judge; the length of
10 the probation and the end date; all practice restrictions placed on the
11 licensee by the board; the address of the applicable state board's
12 internet website; and the applicable state board's telephone number to a
13 current or new patient, the patient's guardian or the patient's health
14 care surrogate prior to the patient's first visit following the proba-
15 tionary order while the licensee is on probation pursuant to a proba-
16 tionary order made after January first, two thousand twenty-two, in any
17 of the circumstances listed in paragraph (a), (b), (c) or (d) of this
18 subdivision. Such written disclosure shall be provided to the patient,
19 the patient's guardian or the patient's health care surrogate in the
20 licensee's office prior to the time the patient enters the examination
21 room and the examination or treatment commences. The licensee or, in
22 the event that the patient's appointment is at a location other than the
23 licensee's practice, the licensee or the hospital or practice where the
24 patient's appointment is occurring shall provide the disclosure under
25 the following circumstances:

26 (a) A complaint filed against the licensee indicates or the legal
27 conclusions of an administrative law judge find that the licensee is
28 implicated in any of the following:

- 29 (i) gross negligence;
30 (ii) repeated negligent acts involving a departure from the standard
31 of care with multiple patients;
32 (iii) felony conviction arising from or occurring during patient care
33 or treatment; or
34 (iv) mental illness or other cognitive impairment that impedes a
35 licensee's ability to safely render patient care.

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

- 38 (i) that a third-party chaperone be present when the licensee examines
39 patients as a result of sexual misconduct; and/or
40 (ii) that the licensee have a monitor.

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

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

45 (4) The licensee or, in the event that the patient's appointment is at
46 a location other than the licensee's practice, the licensee or the
47 hospital or practice where the patient's appointment is occurring shall
48 obtain from each patient a signed receipt following the disclosure
49 described in subdivision three of this section that includes a written
50 explanation of how the patient can find further information on the
51 licensee's probation on the applicable state board's internet website.

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

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

6 § 2. This act shall take effect on the one hundred eightieth day after
7 it shall have become a law and shall apply to all probationary orders
8 issued on or after January 1, 2022. Effective immediately, the addition,
9 amendment and/or repeal of any rule or regulation necessary for the
10 implementation of this act on its effective date are authorized to be
11 made and completed on or before such effective date.