

STATE OF NEW YORK

4780--A

2021-2022 Regular Sessions

IN SENATE

February 11, 2021

Introduced by Sens. STAVISKY, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

a. For purposes of this subdivision:

(1) "Employment termination" means termination of a licensee's employment, privileges or contract, by or on behalf of a hospital, institution, or employer, for determined or admitted professional misconduct as defined in this article, which is directly related to the professional duties for which the licensee was licensed and/or a voluntary or involuntary resignation to avoid such termination.

(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.

LBD07641-02-2

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 the reporting described in this
31 subdivision 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) Failure of a licensee to submit a report to the department within
36 such thirty day period may be grounds for professional misconduct pursu-
37 ant 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 subdivi-
49 sion 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 preliminary 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 the commissioner or the deputy commissioner for the professions, or their designee.

(3) "Licensee" and "registered entity" shall include a professional license, certificate, registration, permit or other authorization of the licensee or registered entity to practice pursuant to this article.

(4) "Designated regent" shall mean a member of the board of regents who has been designated by the chancellor of the board of regents.

b. Notice of summary suspension order and preliminary hearing.

(1) Whenever the department officer determines after an investigation and a recommendation by the professional conduct officer that based upon a determination that a licensee or registered entity is causing, engaging in or maintaining a condition or activity which in the department officer's opinion constitutes an imminent danger to the health, safety or welfare of the public and that it therefore appears to be prejudicial to the interests of the people to delay action until an opportunity for a hearing can be provided in accordance with the provisions of this section, the department officer, by written notice, may order the licensee or registered entity to discontinue such dangerous condition or activity or take certain action immediately and for a period of ninety days from the date of service of the order, suspending such licensee or registered entity's privileges to practice such profession pursuant to this title in the state of New York. 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) Service of the summary suspension order upon the licensee or registered entity shall include a statement of the charges, including the facts and circumstances that are alleged to justify the summary suspension order and a notice of preliminary hearing, which shall be held solely for the purpose of determining whether the summary suspen-

1 sion order should be continued, modified, or discontinued due to immi-
2 nent danger to the health, safety or welfare of the public until the
3 completion of the final disciplinary proceeding pursuant to subdivision
4 three of this section or whether such summary suspension order previous-
5 ly issued should be lifted immediately. The summary suspension order,
6 statement of charges and notice of preliminary hearing shall be sent to
7 the licensee or registered entity by registered or certified mail or be
8 personally served.

9 (3) The notice of preliminary hearing shall specify that the purpose
10 of the hearing is to determine whether the summary suspension order
11 should be continued, modified, or discontinued due to imminent danger to
12 the health, safety or welfare of the public until the completion of the
13 final disciplinary proceeding under subdivision three of this section or
14 whether such summary suspension order previously issued should be lifted
15 immediately. The notice of preliminary hearing shall also set forth:

16 (i) the time and place of the preliminary hearing, which, unless
17 otherwise requested or consented to by the licensee or registered enti-
18 ty, shall be held in the regional office of the department in closest
19 proximity to the events alleged in the statement of charges provided,
20 however, that where it is not possible to conduct such hearing in such
21 office within the timeframe required by this subdivision, then: (A) such
22 hearing may be conducted in a regional office in close proximity to such
23 events to the greatest extent practicable; or (B) participants who are
24 unable to physically appear at the location in closest proximity in the
25 timeframes required may participate in such hearing via videoconference
26 technology with the consent of all parties, except that the respondent
27 and/or his or her attorney cannot refuse the use of videoconference
28 technology to hold such a hearing if videoconferencing is the only means
29 by which the hearing can be safely held due to a declared state of emer-
30 gency or similar risk to the health or safety of the public;

31 (ii) that the licensee or registered entity may file a written
32 response to the statement of charges and accompanying evidence prior to
33 the hearing and in response to any recommendation made by the designated
34 regent within seven days of receiving such charges or recommendation;

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

37 (iv) that both parties may present oral arguments, but no testimony
38 shall be taken, and no witnesses shall be called;

39 (v) that a stenographic record of the hearing shall be made and be
40 made promptly available to the licensee or registered entity without
41 charge; and

42 (vi) such other information as may be considered appropriate by the
43 department.

44 (4) The department officer may at any time, before a final determi-
45 nation is made under this subdivision, vacate such summary suspension
46 order pursuant to this subdivision if the public health, safety or
47 welfare no longer imperatively requires emergency action against a
48 professional license, certificate, registration, permit or other author-
49 ization of the licensee or registered entity to practice under this
50 title.

51 c. Order proceedings.

52 (1) A preliminary hearing shall be scheduled to commence no less than
53 ten nor more than forty-five days after the date of service of the
54 notice of preliminary hearing and summary suspension order, if any, and
55 statement of charges, unless additional time is requested or consented
56 to by the licensee or registered entity. The preliminary hearing shall

1 be completed within sixty days of the date of service of the notice of
2 hearing and summary suspension order. The department shall establish a
3 hearing schedule to ensure that such preliminary hearing is completed
4 within the required timeframes. The designated regent, upon request, may
5 grant a limited and time specific adjournment to the department that
6 would extend the preliminary hearing beyond the sixty days if the desig-
7 nated regent determines that the delay is attributable to a circumstance
8 or occurrence substantially beyond the control of the department and an
9 injustice would result if the adjournment were not granted. The licensee
10 or registered entity may request an adjournment at any time, and such
11 requests that are reasonable shall be granted. If an adjournment is
12 granted, it shall extend the initial ninety-day period of summary
13 suspension issued pursuant to this subdivision by an equal number of
14 days.

15 (2) Such preliminary hearing shall consist of oral arguments on the
16 continuation, modification or discontinuance of the summary suspension
17 order. Such preliminary hearing shall be conducted by the designated
18 regent.

19 (3) The department officer shall designate an administrative officer,
20 admitted to practice as an attorney in the state of New York, who shall
21 have the authority to rule on all motions, procedures and other legal
22 objections and shall draft a report at the direction of the designated
23 regent. The administrative officer shall not be entitled to a vote, and
24 such administrative officer's report shall reflect the views of the
25 designated regent.

26 (4) The evidence in support of the charges shall be presented by an
27 attorney for the department. The licensee or registered entity shall
28 have the rights stated in the notice of hearing. The designated regent
29 shall not be bound by the rules of evidence.

30 (5) The designated regent shall review the evidence and the oral argu-
31 ments and determine, whether the department has shown, by a preponder-
32 ance of the evidence, that the public health, safety or welfare impera-
33 tively requires emergency action against the licensee or registered
34 entity to practice under this title and whether the summary suspension
35 order should be continued or modified.

36 d. Final determination on summary suspension.

37 (1) The designated regent shall have seven days from the completion of
38 the preliminary hearing to issue a written recommendation as to whether
39 a summary suspension order concerning such licensee or registered entity
40 shall be continued or modified until completion of the final discipli-
41 nary proceeding under subdivision three of this section or whether any
42 such summary suspension order previously imposed shall be lifted imme-
43 diately. Such designated regent shall promptly forward such recommenda-
44 tion to the full board of regents. A copy of such recommendation shall
45 promptly be forwarded to the licensee or registered entity, as the case
46 may be, providing notice of the date on which such recommendation will
47 be considered by the board of regents.

48 (2) At its next regularly scheduled meeting, or at a special meeting,
49 the board of regents shall consider the transcript of the preliminary
50 hearing and the recommendation of the designated regent, as well as any
51 response from the licensee or registered entity, and make a final deter-
52 mination as to whether a summary suspension order shall be continued or
53 modified until completion of a final disciplinary proceeding can be held
54 pursuant to subdivision three of this section or whether any summary
55 suspension order previously imposed shall be lifted immediately.

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

3 5. Court review procedures. [~~The~~] A summary suspension order issued
4 by the department officer pursuant to subdivision ten of this section
5 and the decisions of the board of regents may be reviewed pursuant to
6 the proceedings under article seventy-eight of the civil practice law
7 and rules. Such proceedings shall be returnable before the appellate
8 division of the third judicial department, and such decisions shall not
9 be stayed or enjoined except upon application to such appellate division
10 after notice to the department and to the attorney general and upon a
11 showing that the petitioner has a substantial likelihood of success.

12 § 7. Section 440.55 of the criminal procedure law, as added by chapter
13 134 of the laws of 1996, is amended to read as follows:

14 § 440.55 Notice to education department where a licensed professional
15 has been convicted of a felony or misdemeanor.

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

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