STATE OF NEW YORK

6840

2021-2022 Regular Sessions

IN SENATE

May 19, 2021

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

AN ACT to amend the education law and the public health law, in relation to professional misconduct by physicians, physician's assistants and specialist's assistants

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

Section 1. Subdivision 28 of section 6530 of the education law, as added by chapter 606 of the laws of 1991, is amended and a new subdivision 51 is added to read as follows:

28. Failing to respond within [~~thirty~~] ten days to written communications from the department of health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct. The period of [~~thirty~~] ten days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from the department of health by registered or certified mail, with return receipt requested, to the address appearing in the last registration, the period of [~~thirty~~] ten days shall commence on the date of delivery to the licensee, as indicated by the return receipt;

51. Except when shown to be medically appropriate, repeated acts of clearly excessive or inappropriate prescribing, furnishing, dispensing, or administering of controlled substances or treatment.

§ 2. Section 6532 of the education law, as added by chapter 606 of the laws of 1991, is amended to read as follows:

§ 6532. Enforcement, administration and interpretation of this article. The board [~~of~~] for professional medical conduct and the department of health shall enforce, administer and interpret this article. Before issuing a declaratory ruling pursuant to section two hundred four of the state administrative procedure act with respect to this article, the department of health shall fully consult with the department of educa-

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

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tion. [~~Neither the commissioner of education, the board of regents nor the~~] **The** commissioner of health may promulgate any rules or regulations concerning this article.

§ 3. Subdivision 4 of section 206 of the public health law, as amended by chapter 602 of the laws of 2007, is amended to read as follows:

4. The commissioner may:

(a) issue subpoenas, compel the attendance of witnesses and compel them to testify in any matter or proceeding before [~~him~~] **the commissioner**, and may also require a witness to attend and give testimony in a county where [~~he~~] **the witness** resides or has a place of business without the payment of any fees;

(b) **require, in writing, the production of any and all relevant documents in the possession or control of an individual or entity subject to an investigation or inquiry under this chapter. Unless a shorter period is specified in such writing, as determined for good cause by the commissioner, the required documents shall be produced no later than ten days after the delivery of the writing. Failure by the subject individual or entity to produce to the department the required documents within the ten day or otherwise specified period shall be a violation or failure within the meaning of paragraph (d) of this subdivision. Each additional day of non-production shall be a separate violation or failure;**

(c) annul or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in his judgment affects the public health beyond the territory over which such local board of health has jurisdiction;

[~~(c)~~] **(d)** assess any penalty prescribed for a violation of or a failure to comply with any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto, not exceeding two thousand dollars for every such violation or failure, which penalty may be assessed after a hearing or an opportunity to be heard;

[~~(d)~~] **(e)** assess civil penalties against a public water system which provides water to the public for human consumption through pipes or other constructed conveyances, as further defined in the state sanitary code or, in the case of mass gatherings, the person who holds or promotes the mass gathering as defined in subdivision five of section two hundred twenty-five of this article not to exceed twenty-five thousand dollars per day, for each violation of or failure to comply with any term or provision of the state sanitary code as it relates to public water systems that serve a population of five thousand or more persons or any mass gatherings, which penalty may be assessed after a hearing or an opportunity to be heard**; and**

(f) seek to obtain a warrant based on probable cause that a licensee has committed professional misconduct or a crime from a judicial officer authorized to issue a warrant. Such warrant shall authorize the commissioner and any person authorized by the commissioner to have the authority to inspect all grounds, erections, vehicles, structures, apartments, buildings, places and the contents therein and to remove any books, records, papers, documents, computers, electronic devices and other physical objects.

§ 4. Subparagraphs (i) and (ii) of paragraph (d) of subdivision 10 of section 230 of the public health law, as amended by chapter 477 of the laws of 2008, are amended to read as follows:

(i) A copy of the charges and the notice of the hearing shall be served on the licensee **either: (A)** personally [~~by the board~~] at least thirty days before the hearing[~~. If personal service cannot be made after due diligence and such fact is certified under oath, a copy of the~~

~~charges and the notice of hearing shall be served~~]; (B) by registered or certified mail to the licensee's [~~last known~~] current residential or practice address [~~by the board~~] mailed at least fifteen days before the hearing; (C) by registered or certified mail to the licensee's most recent mailing address pursuant to section sixty-five hundred two of the education law or the licensee's most recent mailing address on file with the department of education pursuant to the notification requirement set forth in subdivision five of such section, mailed at least forty-five days before the hearing; or (D) by first class mail to an attorney, licensed to practice in the state, who has appeared on behalf of the licensee and who has been provided with written authorization of the licensee to accept service, mailed at least thirty days before the hearing.

(ii) The charges shall be made public, consistent with subparagraph (iv) of paragraph (a) of this subdivision, [~~no earlier than five business days~~] immediately after they are served, and the charges shall be accompanied by a statement advising the licensee that such publication will occur; [~~provided, however, that~~] charges may be made public immediately upon issuance of the commissioner's order in the case of summary action taken pursuant to subdivision twelve of this section and no prior notification of such publication need be made to the licensee.

§ 5. Paragraph (a) of subdivision 12 of section 230 of the public health law, as amended by chapter 477 of the laws of 2008, is amended to read as follows:

(a) Whenever the commissioner, (i) after being presented with information indicating that a licensee is causing, engaging in or maintaining a condition or activity which has resulted in the transmission or suspected transmission, or is likely to lead to the transmission, of communicable disease as defined in the state sanitary code or HIV/AIDS, by the state and/or a local health department and if in the commissioner's opinion it would be prejudicial to the interests of the people to delay action until an opportunity for a hearing can be provided in accordance with the prehearing and hearing provisions of this section; [~~or~~] (ii) after being presented with information indicating that a licensee is engaging in excessive or inappropriate prescribing, furnishing, dispensing, or administering of controlled substances or treatment, which in the commissioner's opinion presents a risk to the health of the people and that 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 prehearing and hearing provisions of this section; or (iii) after an investigation and a recommendation by a committee on professional conduct of the state board for professional medical conduct, based upon a determination that a licensee is causing, engaging in or maintaining a condition or activity which in the commissioner's opinion constitutes an imminent danger to the health of the people, 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 prehearing and hearing provisions of this section; the commissioner may order the licensee, by written notice, to discontinue such dangerous condition or activity or take certain action immediately and for a period of [~~ninety~~] one hundred twenty days from the date of service of the order. Within ten days from the date of service of the said order, the state board for professional medical conduct shall commence and regularly schedule such hearing proceedings as required by this section, provided, however, that the hearing shall be completed within [~~ninety~~] one hundred twenty days of

the date of service of the order. To the extent that the issue of imminent danger can be proven without the attorney representing the office of professional medical conduct putting in its entire case, the committee of the board shall first determine whether by a preponderance of the evidence the licensee is causing, engaging in or maintaining a condition or activity which constitutes an imminent danger to the health of the people. The attorney representing the office of professional medical conduct shall have the burden of going forward and proving by a preponderance of the evidence that the licensee's condition, activity or practice constitutes an imminent danger to the health of the people. The licensee shall have an opportunity to be heard and to present proof. When both the office and the licensee have completed their cases with respect to the question of imminent danger, the committee shall promptly make a recommendation to the commissioner on the issue of imminent danger and determine whether the summary order should be left in effect, modified or vacated, and continue the hearing on all the remaining charges, if any, in accordance with paragraph (f) of subdivision ten of this section. Within ten days of the committee's recommendation, the commissioner shall determine whether or not to adopt the committee's recommendations, in whole or in part, and shall leave in effect, modify or vacate his summary order. The state board for professional medical conduct shall make every reasonable effort to avoid any delay in completing and determining such proceedings. If, at the conclusion of the hearing, (i) the hearing committee of the board finds the licensee guilty of one or more of the charges which are the basis for the summary order, (ii) the hearing committee determines that the summary order continue, and (iii) the [~~ninety~~] **one hundred twenty** day term of the order has not expired, the summary order shall remain in full force and effect until a final decision has been rendered by the committee or, if review is sought, by the administrative review board. A summary order shall be public upon issuance.

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