STATE OF NEW YORK

8196--A

2023-2024 Regular Sessions

IN ASSEMBLY

October 27, 2023

Introduced by M. of A. GONZALEZ-ROJAS, SHIMSKY, LEVENBERG, GALLAGHER, ZACCARO -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the education law, in relation to strengthening protections for patients regarding sexual misconduct by medical providers

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

Section 1. Subparagraph (ii) of paragraph (a) of subdivision 10 of section 230 of the public health law, as amended by chapter 558 of the laws of 1994, is amended to read as follows:

(ii) If the investigation of cases referred to an investigation committee involves issues of clinical practice, medical experts, shall be consulted. Experts may be made available by the state medical society of the state of New York, by county medical societies and specialty societies, and by New York state medical associations dedicated to the advancement of non-conventional medical treatments. **Medical experts shall disclose any conflicts of interest including but not limited to shared alma mater, hometown, residence, or relationships, that connects or establishes a bond between such medical expert and the licensee in order to preclude any favorable bias prior to assisting in an investigation. A medical expert shall not be consulted if such medical expert is under investigation, has an administrative warning, or is on probation, and such medical expert shall be dismissed from consulting duties if such medical expert becomes the subject of an investigation, receives an administrative warning, or is put on probation during such experts term of consultation.** Any information obtained by medical experts in consultations, including the names of licensees or patients,

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

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shall be confidential and shall not be disclosed except as otherwise authorized or required by law.

§ 2. Paragraph (a) of subdivision 10 of section 230 of the public health law, as amended by chapter 866 of the laws of 1980, is amended to read as follows:

(a) Investigation. The board for professional medical conduct, by a committee on professional conduct, may investigate on its own any suspected professional misconduct, and shall investigate each complaint received regardless of the source. The results of the investigation **and an objective summary statement produced by the investigator along with a recommendation** shall be referred to the director of the office of professional medical conduct. If the director of the office of professional medical conduct, after consultation with a professional member of the board for professional medical conduct, determines that a hearing is warranted he shall direct counsel to prepare the charges within fifteen days thereafter. If it is determined by the director that the complaint involves a question of professional expertise then such director may seek, and if so shall obtain, the concurrence of at least two members of a panel of three members of the state board for professional medical conduct.

§ 3. Section 230 of the public health law is amended by adding a new subdivision 6-a to read as follows:

6-a. (a) The board shall adopt a zero-tolerance policy for sexual misconduct and the office of professional medical conduct shall publish such policy and make it publicly available on its website. Such policy shall include a statement that a patient cannot consent to any sexual conduct or activity with such patient's treating physician.

(b) The board shall institute annual training or in-service workshops on sexual misconduct and sexual harassment for the office of professional medical conduct staff, including investigators, the division of legal affairs, and the board. The board shall provide comprehensive orientation and training on sexual misconduct and sexual harassment issues utilizing expert speakers, physicians, representatives from the office of the attorney general, crisis intervention centers, and related community programs.

§ 4. The public health law is amended by adding a new section 2803-bb to read as follows:

§ 2803-bb. Protection of patients from sexual misconduct. 1. The principles enunciated in subdivision three of this section are declared to be the public policy of the state and a copy of such statement of rights and responsibilities shall be posted conspicuously in a public place in each hospital covered hereunder.

2. The commissioner shall require that every hospital, as defined in subdivision one of section twenty-eight hundred one of this article, shall adopt and make public a statement of the rights and responsibilities regarding protection of the patients from sexual misconduct who are receiving care in such hospitals, and shall treat such patients in accordance with the provisions of such statement.

3. Said statement of rights and responsibilities regarding protection from sexual misconduct shall include, but not be limited to the following:

a. Every patient shall have the right to request the presence of a family member or third-party chaperone during a physical examination.

b. Every patient shall have the right to receive a written statement of the right to request the presence of a family member or third-party

chaperone during: (1) breast and pelvic examinations of females; and (2) genitalia and rectal examinations of both males and females.

4. Each hospital shall give a copy of the statement to each patient at or prior to the time of admission to the hospital, or to the appointed personal representative at the time of appointment. Such statement shall be provided in a document in addition to, and separate from, any other statement of rights and responsibilities required pursuant to the provisions of this chapter. Upon acknowledgment of the statement by the patient, an acceptance or declination of the presence of a chaperone shall be noted in such patient's chart.

5. As used in this section, the term "chaperone" means a person who acts as a witness for a patient and a health professional during a medical examination or procedure. A chaperone shall stand in a location where they are able to assist as needed and observe the examination, therapy or procedure. A chaperone may be a health care professional or a trained unlicensed staff member. This may include medical assistants, nurses, technicians, therapists, residents, and fellows. Whenever possible, but not required, the chaperone shall be the gender that the patient feels most comfortable with.

§ 5. Section 6530 of the education law is amended by adding two new subdivisions 51 and 52 to read as follows:

51. Sexual impropriety, including but not limited to verbal or physical behavior, gestures, or expressions that could be reasonably interpreted as sexual, disrespectful of patient privacy, or sexually demeaning to a patient.

52. Physical sexual contact between a licensee and patient, or any examination of the breasts or genitals without appropriate consent from a patient or surrogate.

§ 6. The education law is amended by adding a new section 6523-a to read as follows:

§ 6523-a. Additional duties of the state board for medicine. In addition to any other duties of the state board for medicine provided for in law, such board shall query information from the United States department of health and human services national practitioner data bank upon an initial request for licensure by an applicant pursuant to section sixty-five hundred twenty-four of this article. If such query returns any instance of professional misconduct by the applicant, the board shall consider both the severity of the misconduct alone and in relation to the probability of such misconduct recurring upon licensure when determining whether an application for licensure shall be denied or whether to grant the applicant a hearing regarding such instance of professional misconduct.

§ 7. Section 6524 of the education law is amended by adding a new subdivision 6-a to read as follows:

(6-a) Fingerprints and criminal history record check: consent to submission of fingerprints for purposes of conducting a criminal history record check. The commissioner shall submit to the division of criminal justice services two sets of fingerprints of applicants for licensure pursuant to this article, and the division of criminal justice services processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law and any fee imposed by the federal bureau of investigation. The division of criminal justice services and the federal bureau of investigation shall forward such criminal history record to the commissioner in a timely manner. For the purposes of this section, the term "criminal history record" shall mean a record of all convictions of crimes and any pending criminal charges

maintained on an individual by the division of criminal justice services and the federal bureau of investigation. All such criminal history records sent to the commissioner pursuant to this subdivision shall be confidential pursuant to the applicable federal and state laws, rules and regulations, and shall not be published or in any way disclosed to persons other than the commissioner, unless otherwise authorized by law;

§ 8. Subdivisions 20 and 31 of section 6530 of the education law, as added by chapter 606 of the laws of 1991, are amended to read as follows:

20. Conduct [~~**in the practice of medicine**~~] which evidences moral unfitness to practice medicine;

31. Willfully harassing, abusing, or intimidating a patient [~~**either**~~] **or a patient's caregiver or surrogate** physically or verbally;

§ 9. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments to paragraph (a) of subdivision 10 of section 230 of the public health law made by section one of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 5 of chapter 426 of the laws of 1983, as amended, when upon such date the provisions of section two of this act shall take effect. 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.