

# 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:

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

4 (ii) If the investigation of cases referred to an investigation  
5 committee involves issues of clinical practice, medical experts, shall  
6 be consulted. Experts may be made available by the state medical society  
7 of the state of New York, by county medical societies and specialty  
8 societies, and by New York state medical associations dedicated to the  
9 advancement of non-conventional medical treatments. Medical experts  
10 shall disclose any conflicts of interest including but not limited to  
11 shared alma mater, hometown, residence, or relationships, that connects  
12 or establishes a bond between such medical expert and the licensee in  
13 order to preclude any favorable bias prior to assisting in an investi-  
14 gation. A medical expert shall not be consulted if such medical expert  
15 is under investigation, has an administrative warning, or is on  
16 probation, and such medical expert shall be dismissed from consulting  
17 duties if such medical expert becomes the subject of an investigation,  
18 receives an administrative warning, or is put on probation during such  
19 experts term of consultation. Any information obtained by medical  
20 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.

LBD02411-06-4

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

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

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

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

23 6-a. (a) The board shall adopt a zero-tolerance policy for sexual  
24 misconduct and the office of professional medical conduct shall publish  
25 such policy and make it publicly available on its website. Such policy  
26 shall include a statement that a patient cannot consent to any sexual  
27 conduct or activity with such patient's treating physician.

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

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

38 § 2803-bb. Protection of patients from sexual misconduct. 1. The prin-  
39 ciples enunciated in subdivision three of this section are declared to  
40 be the public policy of the state and a copy of such statement of rights  
41 and responsibilities shall be posted conspicuously in a public place in  
42 each hospital covered hereunder.

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

49 3. Said statement of rights and responsibilities regarding protection  
50 from sexual misconduct shall include, but not be limited to the follow-  
51 ing:

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

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

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

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

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

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

22 51. Sexual impropriety, including but not limited to verbal or phys-  
23 ical behavior, gestures, or expressions that could be reasonably inter-  
24 preted as sexual, disrespectful of patient privacy, or sexually demean-  
25 ing to a patient.

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

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

31 § 6523-a. Additional duties of the state board for medicine. In addi-  
32 tion to any other duties of the state board for medicine provided for in  
33 law, such board shall query information from the United States depart-  
34 ment of health and human services national practitioner data bank upon  
35 an initial request for licensure by an applicant pursuant to section  
36 sixty-five hundred twenty-four of this article. If such query returns  
37 any instance of professional misconduct by the applicant, the board  
38 shall consider both the severity of the misconduct alone and in relation  
39 to the probability of such misconduct recurring upon licensure when  
40 determining whether an application for licensure shall be denied or  
41 whether to grant the applicant a hearing regarding such instance of  
42 professional misconduct.

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

45 (6-a) Fingerprints and criminal history record check: consent to  
46 submission of fingerprints for purposes of conducting a criminal history  
47 record check. The commissioner shall submit to the division of criminal  
48 justice services two sets of fingerprints of applicants for licensure  
49 pursuant to this article, and the division of criminal justice services  
50 processing fee imposed pursuant to subdivision eight-a of section eight  
51 hundred thirty-seven of the executive law and any fee imposed by the  
52 federal bureau of investigation. The division of criminal justice  
53 services and the federal bureau of investigation shall forward such  
54 criminal history record to the commissioner in a timely manner. For the  
55 purposes of this section, the term "criminal history record" shall mean  
56 a record of all convictions of crimes and any pending criminal charges

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

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

10 20. Conduct [~~in the practice of medicine~~] which evidences moral unfit-  
11 ness to practice medicine;

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

14 § 9. This act shall take effect on the ninetieth day after it shall  
15 have become a law; provided, however, that the amendments to paragraph  
16 (a) of subdivision 10 of section 230 of the public health law made by  
17 section one of this act shall be subject to the expiration and reversion  
18 of such paragraph pursuant to section 5 of chapter 426 of the laws of  
19 1983, as amended, when upon such date the provisions of section two of  
20 this act shall take effect. Effective immediately, the addition, amend-  
21 ment and/or repeal of any rule or regulation necessary for the imple-  
22 mentation of this act on its effective date are authorized and directed  
23 to be made and completed on or before such effective date.