

STATE OF NEW YORK

9439

IN ASSEMBLY

March 14, 2024

Introduced by M. of A. LEE -- read once and referred to the Committee on Health

AN ACT to amend the education law and the public health law, in relation to requiring notification of misconduct by medical professionals

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

1 Section 1. Subdivisions 20, 28 and 31 of section 6530 of the education
2 law, as added by chapter 606 of the laws of 1991, are amended and two
3 new subdivisions 51 and 52 are added to read as follows:

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

6 28. Failing to respond within [~~thirty~~ ten] days to written communi-
7 cations from the department of health and to make available any relevant
8 records with respect to an inquiry or complaint about the licensee's
9 professional misconduct. The period of [~~thirty~~ ten] days shall commence
10 on the date when such communication was delivered personally to the
11 licensee. If the communication is sent from the department of health by
12 registered or certified mail, with return receipt requested, to the
13 address appearing in the last registration, the period of [~~thirty~~ ten]
14 days shall commence on the date of delivery to the licensee, as indi-
15 cated by the return receipt;

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

18 51. Except for good cause shown, failing to notify the department of
19 health within ten calendar days of having been charged with a crime in
20 any jurisdiction or of any event meeting the definitions of professional
21 misconduct set forth in subdivision nine of this section.

22 52. Verbal, written, or physical behavior of a sexual nature in the
23 practice of medicine that has no legitimate medical purpose and/or that
24 exploits the current or former practitioner-patient relationship in a
25 sexual way. This behavior may occur in person or virtually and may
26 include expressions of thoughts and feelings or gestures and actions
27 that are of a sexual nature or that a patient or surrogate may reason-
28 ably construe as sexual.

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

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1 § 2. Clause (C) of subparagraph (iii) of paragraph (a) of subdivision
2 10 of section 230 of the public health law, as amended by chapter 477 of
3 the laws of 2008, is amended to read as follows:

4 (C) If the director determines that the matter shall be submitted to
5 an investigation committee, an investigation committee shall be convened
6 within ~~[ninety days]~~ one year of any interview of the licensee. The
7 director shall present the investigation committee with relevant
8 documentation including, but not limited to: (1) a copy of the original
9 complaint; (2) the report of the interviewer and the stenographic record
10 if one was taken; (3) the report of any medical or scientific expert;
11 (4) copies of reports of any patient record reviews; and (5) the
12 licensee's submissions.

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

16 (i) A copy of the charges and the notice of the hearing shall be
17 served on the licensee either: (A) personally [by the board] at least
18 thirty days before the hearing~~[. If personal service cannot be made~~
19 ~~after due diligence and such fact is certified under oath, a copy of the~~
20 ~~charges and the notice of hearing shall be served]; (B) by registered or~~
21 certified mail to the licensee's [last known] current residential or
22 practice address [by the board] mailed at least fifteen days before the
23 hearing; (C) by registered or certified mail to the licensee's most
24 recent mailing address pursuant to section sixty-five hundred two of the
25 education law or the licensee's most recent mailing address on file with
26 the department of education pursuant to the notification requirement set
27 forth in subdivision five of such section, mailed at least thirty days
28 before the hearing; or (D) by first class mail to an attorney, licensed
29 to practice in the state, who has appeared on behalf of the licensee and
30 who has been provided with written authorization of the licensee to
31 accept service, mailed at least thirty days before the hearing.

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

40 § 4. Paragraph (p) of subdivision 10 of section 230 of the public
41 health law, as amended by chapter 599 of the laws of 1996, is amended to
42 read as follows:

43 (p) Convictions of crimes or administrative violations. Except for
44 good cause shown, a licensee shall notify the department within ten
45 calendar days of having been charged with a crime in any jurisdiction or
46 of any event meeting the definitions of professional misconduct set
47 forth in subdivision nine of section sixty-five hundred thirty of the
48 education law. In cases of professional misconduct based solely upon a
49 violation of subdivision nine of section sixty-five hundred thirty of
50 the education law, the director may direct that charges be prepared and
51 served and may refer the matter to a committee on professional conduct
52 for its review and report of findings, conclusions as to guilt, and
53 determination. In such cases, the notice of hearing shall state that the
54 licensee shall file a written answer to each of the charges and allega-
55 tions in the statement of charges no later than ten days prior to the
56 hearing, and that any charge or allegation not so answered shall be

1 deemed admitted, that the licensee may wish to seek the advice of coun-
2 sel prior to filing such answer that the licensee may file a brief and
3 affidavits with the committee on professional conduct, that the licensee
4 may appear personally before the committee on professional conduct, may
5 be represented by counsel and may present evidence or sworn testimony in
6 his or her behalf, and the notice may contain such other information as
7 may be considered appropriate by the director. The department may also
8 present evidence or sworn testimony and file a brief at the hearing. A
9 stenographic record of the hearing shall be made. Such evidence or sworn
10 testimony offered to the committee on professional conduct shall be
11 strictly limited to evidence and testimony relating to the nature and
12 severity of the penalty to be imposed upon the licensee. Where the
13 charges are based on the conviction of state law crimes in other juris-
14 dictions, evidence may be offered to the committee which would show that
15 the conviction would not be a crime in New York state. The committee on
16 professional conduct may reasonably limit the number of witnesses whose
17 testimony will be received and the length of time any witness will be
18 permitted to testify. The determination of the committee shall be served
19 upon the licensee and the department in accordance with the provisions
20 of paragraph (h) of this subdivision. A determination pursuant to this
21 subdivision may be reviewed by the administrative review board for
22 professional medical conduct.

23 § 5. Subdivision 12 of section 230 of the public health law, as
24 amended by chapter 627 of the laws of 1996, paragraph (a) as amended by
25 chapter 477 of the laws of 2008 and paragraph (b) as amended by section
26 3 of part CC of chapter 57 of the laws of 2018, is amended to read as
27 follows:

28 12. Summary action. (a) Whenever the commissioner, (i) after being
29 presented with information indicating that a licensee is causing, engag-
30 ing in or maintaining a condition or activity which has resulted in the
31 transmission or suspected transmission, or is likely to lead to the
32 transmission, of communicable disease as defined in the state sanitary
33 code or HIV/AIDS, by the state and/or a local health department and if
34 in the commissioner's opinion it would be prejudicial to the interests
35 of the people to delay action until an opportunity for a hearing can be
36 provided in accordance with the prehearing and hearing provisions of
37 this section; or (ii) after an investigation and a recommendation by a
38 committee on professional conduct of the state board for professional
39 medical conduct, based upon a determination that a licensee is causing,
40 engaging in or maintaining a condition or activity which in the commis-
41 sioner's opinion constitutes an imminent danger to the health of the
42 people, and that it therefore appears to be prejudicial to the interests
43 of the people to delay action until an opportunity for a hearing can be
44 provided in accordance with the prehearing and hearing provisions of
45 this section; the commissioner may order the licensee, by written
46 notice, to discontinue such dangerous condition or activity or take
47 certain action immediately and for a period of [~~ninety~~] one hundred
48 twenty days from the date of service of the order. Within [~~ten~~] thirty
49 days from the date of service of the said order, the state board for
50 professional medical conduct shall commence and regularly schedule such
51 hearing proceedings as required by this section, provided, however, that
52 the hearing shall be completed within [~~ninety~~] one hundred twenty days
53 of the date of service of the order. To the extent that the issue of
54 imminent danger can be proven without the attorney representing the
55 office of professional medical conduct putting in its entire case, the
56 committee of the board shall first determine whether by a preponderance

1 of the evidence the licensee is causing, engaging in or maintaining a
2 condition or activity which constitutes an imminent danger to the health
3 of the people. The attorney representing the office of professional
4 medical conduct shall have the burden of going forward and proving by a
5 preponderance of the evidence that the licensee's condition, activity or
6 practice constitutes an imminent danger to the health of the people. The
7 licensee shall have an opportunity to be heard and to present proof.
8 When both the office and the licensee have completed their cases with
9 respect to the question of imminent danger, the committee shall promptly
10 make a recommendation to the commissioner on the issue of imminent
11 danger and determine whether the summary order should be left in effect,
12 modified or vacated, and continue the hearing on all the remaining
13 charges, if any, in accordance with paragraph (f) of subdivision ten of
14 this section. Within ten days of the committee's recommendation, the
15 commissioner shall determine whether or not to adopt the committee's
16 recommendations, in whole or in part, and shall leave in effect, modify
17 or vacate his summary order. The state board for professional medical
18 conduct shall make every reasonable effort to avoid any delay in
19 completing and determining such proceedings. If, at the conclusion of
20 the hearing, (i) the hearing committee of the board finds the licensee
21 guilty of one or more of the charges which are the basis for the summary
22 order, (ii) the hearing committee determines that the summary order
23 continue, and (iii) the [~~ninety~~] one hundred twenty day term of the
24 order has not expired, the summary order shall remain in full force and
25 effect until a final decision has been rendered by the committee or, if
26 review is sought, by the administrative review board. A summary order
27 shall be public upon issuance.

28 (b) When a licensee has pleaded or been found guilty or convicted of
29 committing an act constituting a felony under New York state law or
30 federal law, or the law of another jurisdiction which, if committed
31 within this state, would have constituted a felony under New York state
32 law, or when a licensee has been charged with committing an act consti-
33 tuting a felony under New York state or federal law or the law of another
34 jurisdiction, where the licensee's alleged conduct, which, if commit-
35 ted within this state, would have constituted a felony under New York
36 state law, and in the commissioner's opinion the licensee's alleged
37 conduct constitutes an imminent danger to the health of the people, or
38 when the duly authorized professional disciplinary agency of another
39 jurisdiction has made a finding substantially equivalent to a finding
40 that the practice of medicine by the licensee in that jurisdiction
41 constitutes an imminent danger to the health of its people, or when a
42 licensee has been disciplined by a duly authorized professional disci-
43 plinary agency of another jurisdiction for acts which if committed in
44 this state would have constituted the basis for summary action by the
45 commissioner pursuant to paragraph (a) of this subdivision, the commis-
46 sioner, after a recommendation by a committee of professional conduct of
47 the state board for professional medical conduct, may order the licen-
48 see, by written notice, to discontinue or refrain from practicing medi-
49 cine in whole or in part or to take certain actions authorized pursuant
50 to this title immediately. The order of the commissioner shall consti-
51 tute summary action against the licensee and become public upon issu-
52 ance. The summary suspension shall remain in effect until the final
53 conclusion of a hearing which shall commence within ninety days of the
54 date of service of the commissioner's order, end within [~~ninety~~] one
55 hundred eighty days thereafter and otherwise be held in accordance with
56 paragraph (a) of this subdivision, provided, however, that when the

1 commissioner's order is based upon a finding substantially equivalent to
2 a finding that the practice of medicine by the licensee in another
3 jurisdiction constitutes an imminent danger to the health of its people,
4 the hearing shall commence within thirty days after the disciplinary
5 proceedings in that jurisdiction are finally concluded. If, at any time,
6 the felony charge is dismissed, withdrawn or reduced to a non-felony
7 charge, the commissioner's summary order shall terminate.

8 § 6. Paragraph (a) of subdivision 1 of section 2803-e of the public
9 health law, as amended by chapter 294 of the laws of 1985, is amended to
10 read as follows:

11 (a) Hospitals and other facilities approved pursuant to this article
12 shall make a report or cause a report to be made within thirty days of
13 the occurrence of any of the following: the suspension, restriction,
14 termination or curtailment of the training, employment, association or
15 professional privileges or the denial of the certification of completion
16 of training of an individual licensed pursuant to the provisions of
17 title eight of the education law or of a medical resident with such
18 facility for reasons related in any way to alleged mental or physical
19 impairment, incompetence, malpractice or misconduct or impairment of
20 patient safety or welfare; the voluntary or involuntary resignation or
21 withdrawal of association or of privileges with such facility to avoid
22 the imposition of disciplinary measures; notification by the hospital or
23 facility, to any entity providing personnel to perform professional
24 services to such hospital or facility, that the entity may not assign a
25 particular individual to provide such services to the hospital or facil-
26 ity, for reasons related in any way to alleged mental or physical
27 impairment, incompetence, malpractice or misconduct or impairment of
28 patient safety or welfare; or the receipt of information which indicates
29 that any professional licensee or medical resident has been convicted of
30 a crime; the denial of staff privileges to a physician if the reasons
31 stated for such denial are related to alleged mental or physical impair-
32 ment, incompetence, malpractice, misconduct or impairment of patient
33 safety or welfare.

34 § 7. This act shall take effect immediately and shall be deemed to
35 have been in full force and effect on and after April 1, 2024; provided,
36 however, that the amendments to paragraph (a) of subdivision 10 of
37 section 230 of the public health law made by section two of this act
38 shall not affect the expiration of such paragraph and shall expire ther-
39 ewith.