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:

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

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

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;

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

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

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

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

LBD14607-02-4

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

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

§ 3. 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 thirty 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.

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

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

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

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

12. Summary action. (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 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~~] **thirty** 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.

(b) When a licensee has pleaded or been found guilty or convicted of committing an act constituting a felony under New York state law or federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York state law, or when a licensee has been charged with committing an act constituting a felony under New York state or federal law or the law of another jurisdiction, where the licensee's alleged conduct, which, if committed within this state, would have constituted a felony under New York state law, and in the commissioner's opinion the licensee's alleged conduct constitutes an imminent danger to the health of the people, or when the duly authorized professional disciplinary agency of another jurisdiction has made a finding substantially equivalent to a finding that the practice of medicine by the licensee in that jurisdiction constitutes an imminent danger to the health of its people, or when a licensee has been disciplined by a duly authorized professional disciplinary agency of another jurisdiction for acts which if committed in this state would have constituted the basis for summary action by the commissioner pursuant to paragraph (a) of this subdivision, the commissioner, after a recommendation by a committee of professional conduct of the state board for professional medical conduct, may order the licensee, by written notice, to discontinue or refrain from practicing medicine in whole or in part or to take certain actions authorized pursuant to this title immediately. The order of the commissioner shall constitute summary action against the licensee and become public upon issuance. The summary suspension shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the date of service of the commissioner's order, end within [~~ninety~~] **one hundred eighty** days thereafter and otherwise be held in accordance with paragraph (a) of this subdivision, provided, however, that when the

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

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

(a) Hospitals and other facilities approved pursuant to this article shall make a report or cause a report to be made within thirty days of the occurrence of any of the following: the suspension, restriction, termination or curtailment of the training, employment, association or professional privileges or the denial of the certification of completion of training of an individual licensed pursuant to the provisions of title eight of the education law or of a medical resident with such facility for reasons related in any way to alleged mental or physical impairment, incompetence, malpractice or misconduct or impairment of patient safety or welfare; the voluntary or involuntary resignation or withdrawal of association or of privileges with such facility to avoid the imposition of disciplinary measures**; notification by the hospital or facility, to any entity providing personnel to perform professional services to such hospital or facility, that the entity may not assign a particular individual to provide such services to the hospital or facility, for reasons related in any way to alleged mental or physical impairment, incompetence, malpractice or misconduct or impairment of patient safety or welfare**; or the receipt of information which indicates that any professional licensee or medical resident has been convicted of a crime; the denial of staff privileges to a physician if the reasons stated for such denial are related to alleged mental or physical impairment, incompetence, malpractice, misconduct or impairment of patient safety or welfare.

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