

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.

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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.