§ 230. State board for professional medical conduct; proceedings. 1. A state board for professional medical conduct is hereby created in the department in matters of professional misconduct as defined in sections sixty-five hundred thirty and sixty-five hundred thirty-one of the education law. Its physician members shall be appointed by the commissioner at least eighty-five percent of whom shall be from among nominations submitted by the medical society of the state of New York, the New York state osteopathic society, the New York academy of medicine, county medical societies, statewide specialty societies recognized by the council of medical specialty societies, and the hospital association of New York state. Its lay members shall be appointed by the commissioner with the approval of the governor. The board of regents shall also appoint twenty percent of the members of the board. Not less than sixty-seven percent of the members appointed by the board of regents shall be physicians. Not less than eighty-five percent of the physician members appointed by the board of regents shall be from among nominations submitted by the medical society of the state of New York, the New York state osteopathic society, the New York academy of medicine, county medical societies, statewide medical societies recognized by the council of medical specialty societies, and the hospital association of New York state. Any failure to meet the percentage thresholds stated in this subdivision shall not be grounds for invalidating any action by or on authority of the board for professional medical conduct or a committee or a member thereof. The board for professional medical conduct shall consist of not fewer than eighteen physicians licensed in the state for at least five years, two of whom shall be doctors of osteopathy, not fewer than two of whom shall be physicians who dedicate a significant portion of their practice to the use of non-conventional medical treatments who may be nominated by New York state medical associations dedicated to the advancement of such treatments, at least one of whom shall have expertise in palliative care, and not fewer than seven lay members. An executive secretary shall be appointed by the chairperson and shall be a licensed physician. Such executive secretary shall not be a member of the board, shall hold office at the pleasure of, and shall have the powers and duties assigned and the annual salary fixed by, the chairperson. The chairperson shall also assign such secretaries or other persons to the board as are

necessary.

2. Members of such board shall be appointed by the commissioner or the board of regents for three year terms except that the terms of those first appointed shall be arranged so that as nearly as possible an equal number shall terminate annually. A vacancy occurring during a term shall be filled by an appointment by the commissioner or the board of regents for the unexpired term.

3. Each member of the board shall receive a certificate of appointment, shall before beginning his term of office file a constitutional oath of office with the secretary of state, shall receive up to one hundred fifty dollars as prescribed by the commissioner for each day devoted to board work not to exceed ten thousand dollars in any one year, and shall be reimbursed for his necessary expenses. Any member may be removed from the board at the pleasure of the commissioner.

4. The governor shall annually designate from the members of the board a chairperson who shall be a physician and vice-chairperson. The board shall meet upon call of the chairperson, and may adopt bylaws consistent with this section. A quorum for the transaction of business by the board shall be a majority of members.

5. From among the members of the board two or more committees on professional conduct shall be appointed by the board chairperson.

6. Any committee on professional conduct appointed pursuant to the provisions of this section shall consist of two physicians and one lay member.

7. (a) The board, by its committees on professional conduct, shall conduct disciplinary proceedings as prescribed in this section and shall assist in other professional conduct matters as prescribed by the chairperson. In this section the term "licensee" shall mean physician, including a physician practicing under a limited permit, a medical resident, physician's assistant and specialist's assistant. A committee on professional conduct, on notice to the licensee and after affording

the licensee, the office of professional medical conduct, and their attorneys an opportunity to be heard, shall have the authority to direct a licensee to submit to a medical or psychiatric examination when the committee has reason to believe the licensee may be impaired by alcohol, drugs, physical disability or mental disability. The committee, with the advice of the licensee and the office of professional medical conduct, shall designate the physician who will conduct the examination. The results of the examination shall be provided by the examining physician to the committee, the licensee, and the office of professional medical conduct. The licensee may also obtain a physician to conduct an examination the results of which shall be provided to the committee and the office of professional medical conduct.

(b) A committee on professional conduct may sit as an administrative tribunal for the purpose of issuing an order authorizing the office of professional medical conduct to obtain medical records or other protected health information pertaining to the licensee's physical or mental condition when the committee has reason to believe that the licensee may be impaired by alcohol, drugs, physical disability or mental disability and that the records or information may be relevant to the alleged impairment or that information regarding the licensee's medical condition may be relevant to an inquiry into a report of a communicable disease, as defined by the state sanitary code or HIV/AIDS. No such order shall be issued except on notice to the licensee and after affording the licensee and the office of professional medical conduct an opportunity to be heard.

(c) A committee on professional conduct, on notice to the licensee and after affording the licensee and the office of professional medical conduct an opportunity to be heard, shall have the authority to direct a licensee to submit to a clinical competency examination when the committee has reason to believe that the licensee has practiced with incompetence, generally in his or her medical practice or in a specific area of his or her medical practice. The committee, with the advice of the licensee and the office of professional medical conduct, shall designate the facility or institution to conduct the clinical competency examination. The results of the clinical competency examination shall be provided by the facility or institution to the committee, the licensee and the office of professional medical conduct. The licensee may also

obtain an accredited facility or institution to conduct a clinical competency examination, the results of which shall be provided to the committee and the office of professional medical conduct.

8. Notwithstanding any other provision of law, no member of a committee on professional conduct nor an employee of the board shall be liable in damages to any person for any action taken or recommendation made by him within the scope of his function as a member of such committee or employee provided that (a) such member or employee has taken action or made recommendations within the scope of his function and without malice, and (b) in the reasonable belief after reasonable investigation that the act or recommendation was warranted, based upon the facts disclosed.

9. Notwithstanding any other provisions of law, neither the proceedings nor the records of any such committee shall be subject to disclosure under article thirty-one of the civil practice law and rules except as hereinafter provided. No person in attendance at a meeting of any such committee shall be required to testify as to what transpired thereat. The prohibition relating to discovery of testimony shall not apply to the statements made by any person in attendance at such a meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting.

9-a. At any time, if the board for professional medical conduct or the office of professional medical conduct determines that there is a reasonable belief that an act or omission that constitutes a crime under the law of the state of New York, any other state, or the United States has been committed by the licensee, the board for professional medical conduct or office of professional medical conduct shall notify the appropriate law enforcement official or authority except when the act or omission constitutes legally protected health activity, as defined by section 570.17 of the criminal procedure law.

9-b. Neither the board for professional medical conduct nor the office of professional medical conduct shall charge a licensee with misconduct as defined in sections sixty-five hundred thirty and sixty-five hundred

thirty-one of the education law, or cause a report made to the director of such office to be investigated beyond a preliminary review as set forth in clause (A) of subparagraph (i) of paragraph (a) of subdivision ten of this section, where such report is determined to be based solely upon the recommendation or provision of a treatment modality to a particular patient by such licensee that is not universally accepted by the medical profession, including but not limited to, varying modalities used in the treatment of Lyme disease and other tick-borne diseases. When a licensee, acting in accordance with paragraph e of subdivision four of section sixty-five hundred twenty-seven of the education law, recommends or provides a treatment modality that effectively treats human disease, pain, injury, deformity or physical condition for which the licensee is treating a patient, the recommendation or provision of that modality to a particular patient shall not, by itself, constitute professional misconduct. The licensee shall otherwise abide by all other applicable professional requirements.

9-c. (a) Neither the board for professional medical conduct nor the office of professional medical conduct shall charge a licensee, acting within their scope of practice, with misconduct as defined in sections sixty-five hundred thirty and sixty-five hundred thirty-one of the education law, or cause a report made to the director of such office to be investigated beyond a preliminary review as set forth in clause (A) of subparagraph (i) of paragraph (a) of subdivision ten of this section, where such report is determined to be based solely upon any legally protected health activity, as defined by section 570.17 of the criminal procedure law.

(b) When a licensee, acting within their scope of practice, and in accordance with paragraph e of subdivision four of section sixty-five hundred twenty-seven of the education law, engages in legally protected health activity, as defined by section 570.17 of the criminal procedure law, such legally protected activity shall not, by itself, constitute professional misconduct. The licensee shall otherwise abide by all other applicable professional requirements.

10. Professional misconduct proceedings shall consist of:

* (a) Investigation. (i) (A) The board for professional medical

conduct, by the director of the office of professional medical conduct, may investigate on its own any suspected professional misconduct, and shall investigate each complaint received regardless of the source. By the conclusion of a preliminary review, including an internal clinical review, the director shall determine if a report is based solely upon the recommendation or provision of a treatment modality by a licensee that is not universally accepted by the medical profession, including but not limited to varying modalities used in the treatment of Lyme disease or other tick-borne diseases. Upon a determination by the director that a report is based solely upon the provision of a treatment modality that is not universally accepted, no further review shall be conducted and no charges shall be brought. Nothing in this section shall preclude the director from making such a determination earlier in, or subsequent to, a preliminary review. (B) The director of the office of professional medical conduct shall cause a preliminary review of every report made to the department pursuant to section twenty-eight hundred three-e as added by chapter eight hundred sixty-six of the laws of nineteen hundred eighty, sections twenty-eight hundred five-l and forty-four hundred five-b of this chapter, and section three hundred fifteen of the insurance law, to determine if such report reasonably appears to reflect physician conduct warranting further investigation pursuant to this subparagraph.

(i-a) The director shall, in addition to the determination required by clause (A) of subparagraph (i) of this paragraph, determine if a report is based solely upon conduct which is otherwise permissible pursuant to section sixty-five hundred thirty-one-b of the education law and subdivision nine-c of this section, and upon a determination by the director that a report is based solely upon such permissible conduct, no further review shall be conducted and no charges shall be brought. Nothing in this section shall preclude the director from making such a determination earlier in, or subsequent to, a preliminary review.

(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. Any information

obtained by medical experts in consultations, including the names of licensees or patients, shall be confidential and shall not be disclosed except as otherwise authorized or required by law.

(iii) In the investigation of cases referred to an investigation committee, the licensee being investigated shall have an opportunity to be interviewed by the office of professional medical conduct in order to provide an explanation of the issues under investigation. Providing an opportunity for such an interview shall be a condition precedent to the convening of an investigation committee on professional misconduct of the board for professional medical conduct.

(A) At least twenty days before the interview, except as otherwise set forth herein, the licensee under investigation shall be given written notice of: (1) a description of the conduct that is the subject of the investigation; (2) the issues relating to the conduct that have been identified at the time of the notice; (3) the time frame of the conduct under investigation; (4) the identity of each patient whose contact with or care by the licensee is believed to be relevant to the investigation; and (5) the fact that the licensee may be represented by counsel and may be accompanied by a stenographer to transcribe the proceeding. All costs of transcription shall be paid by the licensee and a copy shall be provided to the department by the licensee within thirty days of the interview. The notice required by this subparagraph may be given less than twenty days before an interview in any case where the office of professional medical conduct anticipates that the commissioner will take summary action under subdivision twelve of this section, provided that the notice is given within a reasonable amount of time prior to the interview and advises of the possible summary action.

(B) Within thirty days following the interview or, in a case where a stenographer was present at the interview, within fifteen days after the office of professional medical conduct receives the transcript of the interview, whichever is later, the licensee shall be provided with a copy of the report of the interviewer. In addition, the licensee shall promptly be given written notice of issues identified subsequent to the interview. The licensee may submit written comments or expert opinion or medical or scientific literature that is directly relevant to the issues that have been identified by the office of professional medical conduct to the office of professional medical conduct at any time.

(C) If the director determines that the matter shall be submitted to an investigation committee, an investigation committee shall be convened within ninety days 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.

(D) If the director determines to close an investigation following an interview without presentation to an investigation committee, the office of professional medical conduct shall notify the licensee in writing.

(iv) If the director of the office of professional medical conduct, after obtaining the concurrence of a majority of an investigation committee, and after consultation with the executive secretary, determines that a hearing is warranted the director shall, within fifteen days thereafter, direct counsel to prepare the charges. If the investigation committee is unanimous in its concurrence that a hearing is warranted, the charges shall be made public under paragraph (d) of this subdivision. If the investigation committee is not unanimous in its concurrence that a hearing is warranted, the members of such committee shall vote on whether the charges should be made public, and if all of the committee members vote in favor of publication, the charges shall be made public under paragraph (d) of this subdivision. If the director determines after consultation with an investigation committee that: (A) evidence exists of a single incident of negligence or incompetence, a pattern of inappropriate prescribing or medical practice, or impairment by drugs, alcohol, physical or mental disability; (B) a recommendation was made by a county medical society or the medical society of the state of New York that warrants further review; or (C) the facts underlying a verdict in a medical malpractice action warrant further review, the director, in addition to the authority set forth in this section, shall be authorized to conduct a comprehensive review of patient records of the licensee and such office records of the licensee as are related to said determination. The licensee shall cooperate with the investigation and willful failure to cooperate in a substantial or material respect may result in an enforcement proceeding pursuant to subparagraph (ii) of

paragraph (o) of this subdivision. If there is a question of alcoholism, alcohol abuse, drug abuse or mental illness, the director may refer the matter to a committee, as referred to in subparagraph (ii) of paragraph (c) of subdivision eleven of this section.

(v) The files of the office of professional medical conduct relating to the investigation of possible instances of professional misconduct shall be confidential and not subject to disclosure at the request of any person, except as provided by law in a pending disciplinary action or proceeding. The provisions of this paragraph shall not prevent the office from sharing information concerning investigations within the department and, pursuant to subpoena, with other duly authorized public agencies responsible for professional regulation or criminal prosecution. Nothing in this subparagraph shall affect the duties of notification set forth in subdivision nine-a of this section or prevent the publication of charges or of the findings, conclusions, determinations, or order of a hearing committee pursuant to paragraphs (d) or (g) of this subdivision. In addition, the commissioner may disclose the information when, in his or her professional judgment, disclosure of such information would avert or minimize a public health threat. Any such disclosure shall not affect the confidentiality of other information in the files of the office of professional medical conduct related to the investigation.

(vi) The office of professional medical conduct, acting under this section, may have access to the criminal history record of any licensee governed by the provisions of this section maintained by the division of criminal justice services pursuant to subdivision six of section eight hundred thirty-seven of the executive law.

(vii) The director of the office of professional medical conduct, in consultation with the patient safety center, shall cause a review on a continuous basis of medical malpractice claim and disposition information reported to the commissioner under section three hundred fifteen of the insurance law, for the purpose of identifying potential misconduct. The office shall commence a misconduct investigation if potential misconduct is identified as a result of such review, which shall be based on criteria such as disposition frequency, disposition type including judgment and settlement, disposition award amount, geographic region, specialty, or other factors as appropriate in

identifying potential misconduct.

* NB Effective until July 1, 2028

* (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 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.

* NB Effective July 1, 2028

(b) Charges. The charges shall state the substance of the alleged professional misconduct and shall state clearly and concisely the material facts but not the evidence by which the charges are to be proved.

(c) Notice of hearing. The board shall set the time and place of the hearing. The notice of hearing shall state (1) the date, time and place of the hearing, (2) 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, that any charge and allegation not so answered shall be deemed admitted and that the licensee may wish to seek the advice of counsel prior to filing such answer, (3) that the licensee shall appear personally at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state, (4) that the licensee shall have the right to produce witnesses and evidence in his behalf, to cross-examine witnesses and examine evidence produced against him, and to have subpoenas issued in his behalf to require the production of witnesses and evidence in manner and form as prescribed by the civil practice law and rules or either party may issue such subpoenas in their own behalf, (5) that a stenographic record of the hearing will be made, and (6) such other information as

may be considered appropriate by the committee.

(d) Service of charges and of notice of hearing. (i) A copy of the charges and the notice of the hearing shall be served on the licensee 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 by registered or certified mail to the licensee's last known address by the board at least fifteen 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 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.

(iii) If a hearing on the charges has not yet been conducted or if a hearing has been conducted but the committee has not yet issued a determination, the publication of charges by the department shall include a statement advising that the charges are only allegations which may be contested by the licensee in an administrative hearing, except that no such statement need be included if the licensee fails or affirmatively declines to contest the charges. In the event any or all such charges are dismissed, such dismissal shall be made public within two business days.

(d-1) Disclosure of exculpatory evidence. After service of the charges upon the licensee, counsel for the office of professional medical conduct shall, as soon as practicable and on a continuing basis, provide the licensee with any information or documentation in the possession of the office of professional medical conduct which tends to prove the licensee's innocence.

(e) Committee hearing. The hearing shall be conducted by a committee on professional conduct. The members of the hearing committee shall be appointed by the chairperson of the board who shall designate the committee chairperson. In addition to said committee members, the commissioner shall designate an administrative officer, admitted to practice as an attorney in the state of New York, who shall have the

authority to rule on all motions, including motions to compel disclosure of information or material claimed to be protected because of privilege or confidentiality, procedures and other legal objections and shall draft the conclusions of the hearing committee pursuant to paragraph (g). The administrative officer shall have the authority to rule on objections to questions posed by either party or the committee members. The administrative officer shall not be entitled to vote.

(f) Conduct of hearing. All hearings must be commenced within sixty days of the service of charges except that an adjournment of the initial hearing date may be granted by the hearing committee upon request by either party upon good cause shown. No adjournment shall exceed thirty days. The evidence in support of the charges shall be presented by an attorney. The licensee shall have the rights required to be stated in the notice of hearing (subparagraph (c) of this subdivision) and in section four hundred one of the state administrative procedure act. The committee shall not be bound by the rules of evidence, but its conclusion shall be based on a preponderance of the evidence. A hearing which has been initiated shall not be discontinued because of the death or incapacity to serve of one member of the hearing committee. In the event of a member's death or incapacity to serve on the committee, a member shall be appointed immediately by the chairperson of the board. The member shall affirm in writing that he or she has read and considered evidence and transcripts of the prior proceedings. The last hearing day must be held within one hundred twenty days of the first hearing day. Either party, for good cause shown, may request that the committee extend the last hearing day beyond one hundred twenty days. An extension requested by the licensee and granted by the committee may not be used as the grounds for a proceeding brought under paragraph (j) of this subdivision.

(g) Results of hearing. The committee shall make (1) findings of fact, (2) conclusions concerning the charges sustained or dismissed, and (3) a determination regarding charges sustained or dismissed, and in the event any of the charges have been sustained, of the penalty to be imposed or appropriate action to be taken and the reasons for the determination. For the committee to make a conclusion sustaining a charge, or determining a penalty or the appropriate action to be taken, two members of the committee must vote for such a conclusion or determination. The

committee shall issue an order based on its determination. The committee's findings, conclusions, determinations and order shall become public upon issuance. However, if the time to request a review of the committee's determination has not yet expired, or if the review has been requested but no determination as a result of the review has been issued, such publication shall include a statement advising that the licensee or the department may request a review of the committee's determination. No such statement is required if (a) the time to request such review has expired without the filing of such request by either of the parties, or (b) the licensee and the department both affirmatively decline to request review of the committee's determination or fail to perfect such review. In the event any or all such charges are dismissed, such dismissal shall be made public within two business days.

(h) Disposition of results. (i) The findings, conclusions, determination and the reasons for the determination of the committee shall be served upon the licensee, the department, and any hospitals, primary practice settings or health care plans required to be identified in publicly disseminated physician data pursuant to paragraph (j), (n), or (q) of subdivision one of section twenty-nine hundred ninety-five-a of this chapter, within sixty days of the last day of hearing. Service shall be either by certified mail upon the licensee at the licensee's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail whichever is earlier or by personal service and such service shall be effective upon receipt. The licensee shall deliver to the board the license which has been revoked, annulled, suspended or surrendered, together with the registration certificate, within five days after receipt of the order. If the license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, the licensee shall submit an affidavit to that effect and shall deliver such license or certificate to the board when located. The director of the office shall promptly transmit a copy of the order to the division of professional licensing services of the state education department and to each hospital at which the licensee has privileges.

(ii) When a license has been: (A) revoked or annulled without stay pursuant to subdivision four or five of section two hundred thirty-a of this title; (B) surrendered by a licensee; (C) suspended without stay

for more than one hundred eighty days; or (D) restricted to prohibit the practice of medicine or to preclude the delivery of patient care, the licensee whose license has been so revoked, surrendered, annulled without stay, suspended without stay for more than one hundred eighty days, or restricted shall, within fifteen days of the effective date of the order:

(1) notify his or her patients, of the cessation or limitation of the licensee's medical practice; the names of other physicians or health care practitioners who have agreed to assume responsibility for the patient's care; that the patient should contact one of those named physicians or health care practitioners, or another physician or health care practitioner of the patient's choice, to determine the health care plans, as defined in sections four thousand nine hundred of the insurance law and forty-nine hundred of this chapter, in which the physician or health care practitioner participates and the polices and procedures of such physician or other health care practitioner; that the patient should notify the licensee of the name of the physician or other health care practitioner to whom the patient's medical records should be transferred; and that the licensee will retain, and remain responsible for the maintenance of the patient's medical records until the patient provides notice that the records shall be transferred directly to the patient, consistent with the provisions of sections seventeen and eighteen of this chapter, or to another practitioner of the patient's choice. The licensee shall also notify each health care plan with which the licensee contracts or is employed, and each hospital where he or she has privileges in writing of the cessation or limitation of the licensee's medical practice. Within forty-five days of the effective date of the order, the licensee shall provide the office of professional medical conduct with proof, in a form acceptable to the director of the office of professional medical conduct, that all patients and hospitals have been notified of the cessation or limitation of the licensee's medical practice.

(2) make arrangements for the transfer and maintenance of the medical records of his or her former patients. Records shall be either transferred to the licensee's former patients consistent with the provisions of sections seventeen and eighteen of this chapter or to another physician or health care practitioner as provided in clause (1)

of this subparagraph who shall expressly assume responsibility for their care and maintenance and for providing access to such records, as provided in subdivisions twenty-two and thirty-two of section sixty-five hundred thirty of the education law, the rules of the board of regents or the regulations of the commissioner of education and sections seventeen and eighteen of this chapter. When records are not transferred to the licensee's former patients or to another physician or health care practitioner, the licensee whose license has been revoked, annulled, surrendered, suspended or restricted shall remain responsible for the care and maintenance of the medical records of his or her former patients and shall be subject to additional proceedings pursuant to subdivisions twenty-two, thirty-two and forty of section sixty-five hundred thirty of the education law in the event that the licensee fails to maintain those medical records or fails to make them available to a former patient.

(3) notify the office of professional medical conduct of the name, address, and telephone number of any physician or other health care practitioner who has agreed to accept responsibility for storing and maintaining these medical records.

(4) in the event that the licensee whose license has been revoked, annulled, surrendered or restricted to prohibit the practice of medicine or to preclude the delivery of patient care holds a federal Drug Enforcement Agency (DEA) certificate, advise the DEA in writing of the licensure action, surrender his or her DEA controlled substance privileges to the DEA, and surrender any unused DEA #222 U.S. Official Order Forms, Schedules 1 and 2 to the DEA.

(5) for licensees whose license has been revoked, annulled, surrendered or restricted to prohibit the practice of medicine or to preclude the delivery of patient care, return any unused New York state official prescription forms to the bureau of narcotics enforcement of the department. The licensee shall cause all other prescription pads bearing the licensee's name to be destroyed. If no other licensee is providing services at the licensee's practice location, all medications shall be properly disposed.

(6) for licensees whose license to practice has been revoked, annulled, surrendered or restricted to prohibit the practice of medicine or to preclude the delivery of patient care, refrain from new

advertising and make reasonable efforts to cease current advertising by which his or her eligibility to practice medicine is represented.

In addition to any other penalty provided for in law, failure to comply with the requirements of this subparagraph shall constitute misconduct that may be prosecuted pursuant to this section and which may subject the licensee to the imposition of additional penalties pursuant to section two hundred thirty-a of this title.

(i) The determinations of a committee on professional conduct of the state board for professional medical conduct may be reviewed by the administrative review board for professional medical conduct.

(j) Time limitations. Failure to comply with a provision of this subdivision requiring that a specified action shall be taken within a specified period of time shall be grounds for a proceeding pursuant to article seventy-eight of the civil practice law and rules for an order staying the hearing or dismissing the charges or any part thereof or any other appropriate relief. Such proceeding shall be returnable before the supreme court of Albany county or New York county. The respondent in such proceeding shall have the initial burden to explain the reasons for the failure to comply with a provision of this subdivision requiring that a specified action to be taken within a specified period of time. The court shall not stay the hearing or dismiss the charges or grant any other relief unless it determines that failure to comply was not caused by the article seventy-eight petitioner and has caused substantial prejudice to the article seventy-eight petitioner.

(k) The executive secretary of the board with the specific approval of a committee on professional conduct of the board shall have the power to issue subpoenas requiring persons to appear before the board and be examined with reference to a matter within the scope of the inquiry or the investigation being conducted by the board and produce books, papers, records or documents pertaining thereto.

(l) The board or its representatives may examine and obtain records of patients in any investigation or proceeding by the board acting within the scope of its authorization. Unless expressly waived by the patient, any information so obtained shall be confidential and shall not be disclosed except to the extent necessary for the proper function of the board and the name of the patient may not be disclosed by the board or

its employees at any stage of the proceedings unless the patient has expressly consented. Any other use or dissemination by any person by any means, unless pursuant to a valid court order or otherwise provided by law, is prohibited.

(m) Expedited procedures. (i) Violations. Violations involving professional misconduct of a minor or technical nature may be resolved by expedited procedures as provided in subparagraph (ii) or (iii) of this paragraph. For purposes of this paragraph violations of a minor or technical nature shall include, but shall not be limited to, isolated instances of violations concerning professional advertising or record keeping, and other isolated violations which do not directly affect or impair the public health, welfare or safety.

(ii) Administrative warning and consultation. If the director of the office of professional medical conduct, after obtaining the concurrence of a majority of a committee on professional conduct, and after consultation with the executive secretary, determines that there is substantial evidence of professional misconduct of a minor or technical nature or of substandard medical practice which does not constitute professional misconduct, the director may issue an administrative warning and/or provide for consultation with a panel of one or more experts, chosen by the director. Panels of one or more experts may include, but shall not be limited to, a peer review committee of a county medical society or a specialty board. Administrative warnings and consultations shall be confidential and shall not constitute an adjudication of guilt or be used as evidence that the licensee is guilty of the alleged misconduct. However, in the event of a further allegation of similar misconduct by the same licensee, the matter may be reopened and further proceedings instituted as provided in this section.

(iii) Violation committee proceeding. If the director determines, after obtaining the concurrence of a majority of a committee on professional conduct, and after consultation with the executive secretary, that there is substantial evidence of a violation and that the violation is of a nature justifying a penalty as specified in this subparagraph the department may prepare and serve charges, either by personal service or by certified mail, return receipt requested. A violation committee proceeding shall be commenced within three years of the alleged professional misconduct. Such charges shall include a

statement that the matter shall be referred to a committee on professional conduct, which shall act as a violations committee for determination. The violations committee shall be appointed by the chairperson of the state board. Paragraph (c) of subdivision ten of this section shall apply to the proceeding. A stenographic record of the hearing shall be made. The evidence in support of the charges shall be presented by an attorney and the licensee shall be afforded an opportunity to be heard and to present evidence in his behalf. Such violations committee may issue a censure and reprimand, may require the licensee to perform up to twenty-five hours of public service in a facility licensed pursuant to article twenty-eight of this chapter in a manner and at a time and place directed by the board, and in addition, or in the alternative, may impose a fine not to exceed five hundred dollars for each specification of minor or technical misconduct. The violations committee may alternatively dismiss the charges in the interest of justice. The order shall be served either by certified mail to the licensee's last known address and such services shall be effective upon receipt or seven days after mailing by certified mail whichever is earlier or by personal service and such service shall be effective upon receipt. The order may be reviewed by the administrative appeals board for professional medical conduct.

(n) Engagement. A proceeding under this section shall be treated in the same manner as an action or proceeding in supreme court for the purpose of any claim by counsel of actual engagement.

(o) Orders for review of medical records. Where the director has issued an order for a comprehensive medical review of patient records and office records pursuant to subparagraph four of paragraph (a) of this subdivision and the licensee has refused to comply with the director's order, the director may apply to a justice of the supreme court, in writing, on notice to the licensee, for a court order to compel compliance with the director's order. The court shall not grant the application unless it finds that (i) there was a reasonable basis for issuance of the director's order and (ii) there is reasonable cause to believe that the records sought are relevant to the director's order. The court may deny the application or grant the application in whole or in part.

(p) Convictions of crimes or administrative violations. 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.

(q) At any time subsequent to the final conclusion of a professional misconduct proceeding against a licensee, whether upon the determination and order of a hearing committee issued pursuant to paragraph (h) of this subdivision or upon the determination and order of the administrative review board issued pursuant to paragraph (d) of subdivision four of section two hundred thirty-c of this title, the

licensee may file a petition with the director, requesting vacatur or modification of the determination and order. The director shall, after reviewing the matter and after consulting with department counsel, determine in the reasonable exercise of his or her discretion whether there is new and material evidence that was not previously available which, had it been available, would likely have led to a different result, or whether circumstances have occurred subsequent to the original determination that warrant a reconsideration of the measure of discipline. Upon determining that such evidence or circumstances exist, the director shall have the authority to join the licensee in an application to the chairperson of the state board for professional medical conduct to vacate or modify the determination and order, as the director may deem appropriate. Upon the joint application of the licensee and the director, the chairperson shall have the authority to grant or deny such application.

11. Reporting of professional misconduct:

(a) The medical society of the state of New York, the New York state osteopathic society or any district osteopathic society, any statewide medical specialty society or organization, and every county medical society, every person licensed pursuant to articles one hundred thirty-one, one hundred thirty-one-B, one hundred thirty-three, one hundred thirty-seven and one hundred thirty-nine of the education law, and the chief executive officer, the chief of the medical staff and the chairperson of each department of every institution which is established pursuant to article twenty-eight of this chapter and a comprehensive health services plan pursuant to article forty-four of this chapter or article forty-three of the insurance law, shall, and any other person may, report to the board any information which such person, medical society, organization institution or plan has which reasonably appears to show that a licensee is guilty of professional misconduct as defined in sections sixty-five hundred thirty and sixty-five hundred thirty-one of the education law. Such reports shall remain confidential and shall not be admitted into evidence in any administrative or judicial proceeding except that the board, its staff, or the members of its committees may begin investigations on the basis of such reports and may use them to develop further information.

(b) Any person, organization, institution, insurance company, osteopathic or medical society who reports or provides information to the board in good faith, and without malice shall not be subject to an action for civil damages or other relief as the result of such report.

(c) Notwithstanding the foregoing, no physician shall be responsible for reporting pursuant to paragraph (a) of this subdivision with respect to any information discovered by such physician solely as a result of:

(i) Participation in a properly conducted mortality and/or morbidity conference, departmental meeting or a medical or tissue committee constituted pursuant to the by-laws of a hospital which is duly established pursuant to article twenty-eight of the public health law, unless the procedures of such conference, department or committee of such hospital shall have been declared to be unacceptable for the purpose hereof by the commissioner, and provided that the obligations of reporting such information when appropriate to do so shall be the responsibility of the chairperson of such conference, department or committee, or

* (ii) Participation and membership during a three year demonstration period in a physician committee of the Medical Society of the State of New York or the New York State Osteopathic Society whose purpose is to confront and refer to treatment physicians who are thought to be suffering from alcoholism, drug abuse, or mental illness. Such demonstration period shall commence on April first, nineteen hundred eighty and terminate on May thirty-first, nineteen hundred eighty-three. An additional demonstration period shall commence on June first, nineteen hundred eighty-three and terminate on March thirty-first, nineteen hundred eighty-six. An additional demonstration period shall commence on April first, nineteen hundred eighty-six and terminate on March thirty-first, nineteen hundred eighty-nine. An additional demonstration period shall commence April first, nineteen hundred eighty-nine and terminate March thirty-first, nineteen hundred ninety-two. An additional demonstration period shall commence April first, nineteen hundred ninety-two and terminate March thirty-first, nineteen hundred ninety-five. An additional demonstration period shall commence on April first, nineteen hundred ninety-five and terminate on March thirty-first, nineteen hundred ninety-eight. An additional demonstration period shall commence on April first, nineteen hundred

ninety-eight and terminate on March thirty-first, two thousand three. An additional demonstration period shall commence on April first, two thousand three and terminate on March thirty-first, two thousand thirteen. An additional demonstration period shall commence April first, two thousand thirteen and terminate on March thirty-first, two thousand eighteen. An additional demonstration period shall commence April first, two thousand eighteen and terminate on July first, two thousand twenty-eight provided, however, that the commissioner may prescribe requirements for the continuation of such demonstration program, including periodic reviews of such programs and submission of any reports and data necessary to permit such reviews. During these additional periods, the provisions of this subparagraph shall also apply to a physician committee of a county medical society.

* NB Expires July 1, 2028

(d) In the event that a physician or administrator of a hospital established pursuant to article twenty-eight of this chapter shall reasonably be unable to determine if any information which he or she has is such that it does reasonably appear to show that a licensee is guilty of professional misconduct and therefore creates an obligation on such physician or such administrator to make a report pursuant to paragraph (a) hereof, he or she may either:

(i) in accordance with procedures established by the board, and without revealing the name of the licensee who he or she is considering making such a report about, request in writing the advice of the board as to whether or not a report should be made, and the physician or administrator so requesting such advice shall then be required to comply with the advice of the board. No such request for advice shall relieve the requesting physician or administrator of any obligation hereunder unless all other material facts are revealed, other than the name of the licensee in question, or

(ii) in the case where the licensee about whom another physician is considering making such report is affiliated with a hospital which is duly established pursuant to article twenty-eight of this chapter, a physician may elect to fulfill the obligations of paragraph (a) hereof by reporting such information to the appropriate executive committee or professional practices peer review committee which is duly constituted pursuant to by-laws of such hospital, unless the peer review procedures

of such hospital shall have been declared to be unacceptable for the purposes hereof by the commissioner. The physician members of such hospital executive committee or professional practices peer review committee shall thereupon have the responsibility of reporting such information to the board pursuant to paragraph (a) hereof, as required thereby, but in the event that such committee determines that a report shall be made to the board, the chairperson of such committee may fulfill the obligation of reporting on behalf of all the members of the committee, or

(iii) in a case where the physician, about whom he or she is considering making such report, is a member of a county medical society or district osteopathic society, and is not affiliated with a hospital, but practices his or her profession within such county or district, a physician may elect to fulfill the obligations of paragraph (a) hereof by reporting such information to the appropriate county medical society's or district osteopathic society's professional practices review committee duly constituted pursuant to the by-laws of such county medical society or district osteopathic society, unless the review procedures of such county medical society or district osteopathic society shall have been declared to be unacceptable for the purposes hereof by the commissioner. The physician members of such review committee shall thereupon have the responsibility of reporting such information to the board pursuant to paragraph (a) hereof, as required thereby, but in the event that such committee determines that a report shall be made to the board, the chairperson of such committee may fulfill the obligation of reporting on behalf of all the members of the committee.

(e) Nothing contained in this subdivision shall be so construed as to require any physician to violate a physician/patient privilege and therefore, no physician shall be required to report any information to the board which such physician has learned solely as a result of rendering treatment to another physician.

(f) A violation of this subdivision shall not be subject to the provisions of sections twelve and twelve-b of this chapter.

* (g) (i) Any physician committee of the Medical Society of the State of New York, the New York State Osteopathic Society or a county medical society referred to in subparagraph (ii) of paragraph (c) of this

subdivision shall develop procedures in consultation with, and approved by, the commissioner, including but not limited to the following:

(A) The committee shall disclose at least once a month such information as the director of the office of professional medical conduct may deem appropriate regarding reports received, contacts or investigations made and the disposition of each report, provided however that the committee shall not disclose any personally identifiable information except as provided in clause (B) or (C) of this subparagraph.

(B) The committee shall immediately report to the director the name, all information obtained and the results of any contact or investigation regarding any physician who is believed to be an imminent danger to the public.

(C) The committee shall report to the director in a timely fashion all information obtained regarding any physician who refuses to cooperate with the committee, refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment.

(D) The committee shall inform each physician who is participating in a program of the procedures followed in the program, of the rights and responsibilities of the physician in the program and of the possible results of noncompliance with the program.

** (ii) No member of any such committee; nor the Medical Society of the State of New York, the New York State Osteopathic Society or a county medical society referred to in subparagraph (ii) of paragraph (c) of this subdivision that establishes a committee; nor any agent, servant, representative or employee that provides service to any such committee or society, shall be liable for damages to any person for any action taken by such committee, society, member, agent, servant, representative or employee provided that such action was taken without malice and within the scope of such individual's or entity's function in relation to such committee.

** NB Repealed July 1, 2028

** (iii) The committee, in conjunction with the director of the office of professional medical conduct, shall develop appropriate consent forms and disclosure proceedings as may be necessary under any federal statute, rule or regulation in order to permit the disclosure of the information as may be required under clauses (B) and (C) of subparagraph

(i) of this paragraph.

** NB Repealed July 1, 2028

**(iv) Except as provided in this paragraph and notwithstanding any other provision of law, neither the proceedings nor the records of any such physician committee shall be subject to disclosure under article thirty-one of the civil practice law and rules nor shall any member of any such committee nor any person in attendance at any such meeting be required to testify as to what transpired thereat.

** NB Repealed July 1, 2028

* NB Expires July 1, 2028

(h) The office of professional medical conduct shall post on its website information on patients' rights and reporting options under this subdivision regarding professional misconduct, which shall specifically include information on reporting instances of misconduct involving sexual harassment and assault. All physicians' practice settings shall conspicuously post signage, visible to their patients, directing such patients to the office of professional medical conduct's website for information about their rights and how to report professional misconduct.

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 days from the date of service of the order. Within ten 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 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 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 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.

13. (a) Temporary surrender. The license and registration of a licensee who may be temporarily incapacitated for the active practice of medicine and whose alleged incapacity has not resulted in harm to a patient may be voluntarily surrendered to the board for professional medical conduct, which may accept and hold such license during the period of such alleged incapacity or the board for professional medical conduct may accept the surrender of such license after agreement to conditions to be met prior to the restoration of the license. The board shall give prompt written notification of such surrender to the division of professional licensing services of the state education department, and to each hospital at which the licensee has privileges. The licensee whose license is so surrendered shall notify all patients and all persons who request medical services that the licensee has temporarily withdrawn from the practice of medicine. The licensure status of each such licensee shall be "inactive" and the licensee shall not be authorized to practice medicine. The temporary surrender shall not be deemed to be an admission of disability or of professional misconduct, and shall not be used as evidence of a violation of subdivision seven or eight of section sixty-five hundred thirty of the education law unless the licensee practices while the license is "inactive". Any such practice shall constitute a violation of subdivision twelve of section sixty-five hundred thirty of the education law. The surrender of a license under this subdivision shall not bar any disciplinary action except action based solely upon the provisions of subdivision seven or eight of section sixty-five hundred thirty of the education law and where no harm to a patient has resulted, and shall not bar any civil or criminal action or proceeding which might be brought without regard to such surrender. A surrendered license shall be restored upon a showing to the satisfaction of a committee of professional conduct of the state board for professional medical conduct that the licensee is not incapacitated for the active practice of medicine provided, however, that the committee may impose reasonable conditions on the licensee, if it determined that due to the nature and extent of the licensee's former incapacity such conditions are necessary to protect the health of the people. The chairperson of the committee shall issue a restoration order adopting the decision of the committee. Prompt written notification of

such restoration shall be given to the division of professional licensing services of the state education department and to all hospitals which were notified of the surrender of the license.

(b) Permanent surrender. The license and registration of a licensee who may be permanently incapacitated for the active practice of medicine, and whose alleged incapacity has not resulted in harm to a patient, may be voluntarily surrendered to the board for professional medical conduct. The board shall give prompt written notification of such surrender to the division of professional licensing services of the state education department, and to each hospital at which the licensee has privileges. The licensee whose license is so surrendered shall notify all patients and all persons who request medical services that the licensee has permanently withdrawn from the practice of medicine. The permanent surrender shall not be deemed to be an admission of disability of or professional misconduct, and shall not be used as evidence of a violation of subdivision seven or eight of section sixty-five hundred thirty of the education law. The surrender shall not bar any civil or criminal action or proceeding which might be brought without regard to such surrender. There shall be no restoration of a license that has been surrendered pursuant to this subdivision.

14. Reports. The board shall prepare an annual report for the legislature, the governor and other executive offices, the medical profession, medical professional societies, consumer agencies and other interested persons. Such report shall include, but shall not be limited to, a description and analysis of the administrative procedures and operations based upon a statistical summary relating to (i) discipline, (ii) complaint, investigation, and hearing backlog and (iii) budget. Information provided for these sections shall be enumerated by regional office of the office of professional medical conduct.

* 15. The commissioner shall make grants to any physician committee as referred to in subparagraph (ii) of paragraph (c) of subdivision eleven of this section to fund the operations of such committee during the authorized demonstration period. Grants shall be awarded pursuant to an expenditure plan developed by the sponsoring organization in consultation with, and approved by the commissioner. No funds shall be made available unless the committee's procedures have been approved by

the commissioner pursuant to paragraph (g) of subdivision eleven of this section.

* NB Repealed July 1, 2028

16. Liability. Notwithstanding any other provision of law, persons who assist the department as consultants, expert witnesses, administrative officers or monitors in the investigation, prosecution or hearing of alleged professional misconduct, licensure matters, restoration proceedings, probation, or criminal prosecutions for unauthorized practice, shall not be liable for damages in any civil action or proceeding as a result of such assistance, except upon proof of actual malice. The attorney general shall defend such persons in any such action or proceeding, in accordance with section seventeen of the public officers law.

17. Monitoring. (a) A licensee may be ordered to have his or her practice monitored by another appropriate licensee after investigation and review pursuant to paragraph (a) of subdivision ten of this section, if there is reason to believe that the licensee is unable to practice medicine with reasonable skill and safety to patients.

(b) The director of the office of professional medical conduct, after consultation with the executive secretary, shall direct counsel to prepare a notice detailing the reasonable cause and a copy of the notice shall be served on the licensee. The matter shall be presented to a committee on professional conduct by an attorney for the department and the licensee shall have the opportunity to be heard by such committee and may be represented by counsel. A stenographic record of the proceeding shall be made. Service of the notice shall be in accordance with the methods of service authorized by paragraph (d) of subdivision ten of this section.

(c) If the committee determines that reasonable cause exists as specified in paragraph (a) of this subdivision and that there is insufficient evidence for the matter to constitute misconduct as defined in sections sixty-five hundred thirty and section sixty-five hundred thirty-one of the education law, the committee may issue an order directing that the licensee's practice of medicine be monitored for a period specified in the order, which shall in no event exceed one year,

by a licensee approved by the director, which may include members of county medical societies or district osteopathic societies designated by the commissioner. The licensee responsible for monitoring the licensee shall submit regular reports to the director. If the licensee refuses to cooperate with the licensee responsible for monitoring or if the monitoring licensee submits a report that the licensee is not practicing medicine with reasonable skill and safety to his or her patients, the committee may refer the matter to the director for further proceedings pursuant to subdivision ten of this section. An order pursuant to this paragraph shall be kept confidential and shall not be subject to discovery or subpoena, unless the licensee refuses to comply with the order.

(d) A licensee may not seek the appointment of a monitor pursuant to this subdivision in lieu of an order issued pursuant to subdivision seven of this section or a disciplinary proceeding pursuant to subdivision ten or twelve of this section.

18. (a) The director shall have the authority to monitor physicians, physician's assistants and specialist's assistants who have been placed on probation pursuant to a determination of professional misconduct by the board. During such period of probation, the director, or his or her designee, as provided in the order of the board, and after consultation with the executive secretary, (i) may review the professional performance of the licensee by randomly selecting office records, patient records and hospital charts, (ii) may require periodic visits by the licensee to a member of the state board for professional medical conduct or an employee of the office of professional medical conduct, (iii) may require the licensee to obtain an appropriate monitor, approved by the director, to monitor the licensee's practice, (iv) may require an audit of the licensee's billings for services rendered during probation, (v) may require the licensee to submit on a random basis to tests for the presence of alcohol or drugs, (vi) may require the licensee to obtain additional training prior to completion of the probation, (vii) may require the licensee to work in a supervised setting, (viii) may require, as a condition of the licensee's continued practice, that the licensee undergo therapy and/or treatment approved and monitored by the director, (ix) may require that the licensee comply

with the requirements of the penalty imposed, and (x) may impose upon the licensee such additional requirements as reasonably relate to the misconduct found or are necessary to protect the health of the people pursuant to regulation. The director is authorized to delegate some or all of the foregoing responsibilities to designated county medical societies and district osteopathic societies.

(b) Any health care provider licensed pursuant to this chapter or the education law, hospital licensed pursuant to article twenty-eight of this chapter or medical school that participates in a monitoring or remediation program pursuant to this subdivision and subdivision seventeen of this section shall not be liable for the negligence of the monitored licensee in providing medical care pursuant to a monitoring program. However, this paragraph does not diminish the participating provider's, hospital's or school's liability for failure to exercise reasonable care in properly carrying out its responsibilities under the program. The monitored licensee shall be required to maintain medical malpractice insurance coverage with limits no less than two million dollars per occurrence and six million dollars per policy year.

19. Upon receipt of information that indicates a licensee may be in violation of the terms or conditions of probation, the director of the office of professional medical conduct shall conduct an investigation. If the director determines that a licensee may have violated probation, the director shall give notice by letter to the licensee of the facts forming the basis of the alleged violation of probation by the licensee, that the licensee has a right to a hearing and may be represented by counsel. If the licensee does not dispute the facts forming the basis of the alleged violation of probation within twenty days of the date of the letter, the director shall submit the matter to a committee on professional conduct for its review and determination. If within twenty days of the date of the letter, the licensee disputes any of the facts forming the basis of the alleged violation of probation, the licensee shall be afforded a hearing before a committee on professional conduct to hear and make findings of fact, conclusions of law and a determination. A stenographic record of the hearing shall be made. The committee, after providing a licensee with an opportunity to be heard, shall determine whether the licensee has violated probation and shall

impose an appropriate penalty as defined in section two hundred thirty-a of this title. In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. The order may be reviewed by the administrative review board for professional medical conduct.