

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

AN ACT to amend the public health law, the education law and the criminal procedure law, in relation to clarifying and strengthening the authority of the board for professional medical conduct to discipline physicians and other licensees; and to amend the public health law and the education law, in relation to enhancing infection control training and practices

Became a law August 5, 2008, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

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

Section 1. Subdivision 7 of section 230 of the public health law, as amended by chapter 627 of the laws of 1996, is amended to read as follows:

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.

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(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.

§ 2. Subdivision 9-a of section 230 of the public health law, as added by chapter 542 of the laws of 2003, is amended to read as follows:

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 ~~[a criminal offense]~~ 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 ~~[district attorney]~~ law enforcement official or authority.

§ 3. Subparagraph (v) of paragraph (a) of subdivision 10 of section 230 of the public health law, as amended by chapter 542 of the laws of 2003, is amended to read as follows:

(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.

§ 4. Subparagraphs (iii) and (iv) of paragraph (a) of subdivision 10 of section 230 of the public health law, subparagraph (iii) as amended by chapter 599 of the laws of 1996, and subparagraph (iv) as amended by chapter 37 of the laws of 1992, are amended and a new subparagraph (vii) is added to read as follows:

(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. ~~[The licensee may have counsel present.]~~ Providing an opportunity for such an inter-

view shall be a condition precedent to the convening of an investigation committee on professional misconduct of the board for professional medical conduct. [~~Within ninety days of any interview of the licensee, an investigation committee on professional conduct of the board of professional medical conduct shall be convened. The~~]

(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.

(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.

§ 5. Paragraph (c) 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:

(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.

§ 6. Paragraph (d) of subdivision 10 of section 230 of the public health law, as added by chapter 109 of the laws of 1975, is amended to read as follows:

(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 [~~twenty~~ 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.

§ 7. Subdivision 10 of section 230 of the public health law is amended by adding a new paragraph (d-1) to read as follows:

(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.

§ 8. Paragraph (g) of subdivision 10 of section 230 of the public health law, as amended by chapter 627 of the laws of 1996, is amended to read as follows:

(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 [~~in any case in which annulment, suspension without stay or revocation of the licensee's license is ordered~~]. 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.

§ 9. Paragraph (h) of subdivision 10 of section 230 of the public health law, as amended by chapter 542 of the laws of 2000, is amended to read as follows:

(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 policies 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.

§ 10. Subdivision 10 of section 230 of the public health law is amended by adding a new paragraph (q) to read as follows:

(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. Paragraph (a) of subdivision 12 of section 230 of the public health law, as amended by chapter 627 of the laws of 1996, is amended to read as follows:

(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^[7]; 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.

§ 12. Subdivision 16 of section 230 of the public health law, as amended by chapter 266 of the laws of 1986, is amended to read as follows:

16. Liability. Notwithstanding any other provision of law, persons who assist the department as consultants, expert witnesses, administrative officers or monitors in the investigation ~~[e]~~, 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.

§ 13. Subdivision 2 of section 230-a of the public health law, as added by chapter 606 of the laws of 1991, is amended to read as follows:

2. Suspension of license, (a) wholly, for a fixed period of time; (b) wholly, except to the limited extent required for the licensee to successfully complete a course of retraining; (c) wholly, until the licensee successfully completes a course of therapy or treatment prescribed by the board; (d) wholly, until the licensee completes rehabilitation to the satisfaction of the board; (e) wholly, until the licensee complies with the terms or conditions of a board order; (f) partially, until the licensee successfully completes a course of retraining in the area to which the suspension applies; ~~[(e)]~~ (g) partially, for a specified period or until the licensee complies with the terms or conditions of a board order;

§ 14. Paragraph (f) of subdivision 1 of section 2805-k of the public health law, as added by chapter 786 of the laws of 1992, is amended to read as follows:

(f) Documentation that the physician, dentist or podiatrist has completed the course work or training as mandated by section two hundred ~~[thirty-eight]~~ thirty-nine of this chapter or section six thousand five hundred five-b of the education law. A hospital or facility shall not grant or renew professional privileges or association to a physician, dentist, or podiatrist who has not completed such course work or training.

§ 15. Subdivision 4 of section 230-d of the public health law, as added by chapter 365 of the laws of 2007, is amended to read as follows:

4. Licensees shall report adverse events to the department's patient safety center within one business day of the occurrence of such adverse event[~~, and the~~]. Licensees shall also report any suspected health care disease transmission originating in their practices to the patient safety center within one business day of becoming aware of such suspected transmission. For purposes of this section, health care disease transmission shall mean the transmission of a reportable communicable disease that is blood borne from a health care professional to a patient or between patients as a result of improper infection control practices by the health care professional. The reported data shall be subject to all confidentiality provisions provided by section twenty-nine hundred ninety-eight-e of this chapter.

§ 16. The title heading of title 2-E of article 2 and section 239 of the public health law, as added by chapter 786 of the laws of 1992, the title heading as relettered and section 239 as renumbered by chapter 443 of the laws of 1993, are amended to read as follows:

[~~HIV/HBV~~] HIV/HBV/HCV PREVENTION TRAINING

§ 239. Course work or training in infection control practices. (a) Every physician, physician assistant and specialist assistant practicing in the state shall, on or before July first, nineteen hundred ninety-four and every four years thereafter, [~~(a)~~] complete course work or training, appropriate to the professional's practice, approved by the department regarding infection control and barrier precautions, including engineering and work practice controls, in accordance with regulatory standards promulgated by the department in consultation with the department of education, to prevent the transmission of HIV [~~or~~], HBV or HCV in the course of professional practice [~~and~~]. Such coursework or training must also be completed by every medical student, medical resident and physician assistant student in the state as part of the orientation programs conducted by medical schools, medical residency programs and physician assistant programs.

(b) [~~so document~~] Every physician, physician assistant, specialist assistant, medical student, medical resident and physician assistant student must provide to the department[~~7~~] documentation demonstrating the completion of and competence in the coursework or training required under subdivision (a) of this section, provided however, that physicians subject to the provisions of paragraph (f) of subdivision one of section twenty-eight hundred five-k of this chapter shall not be required to [~~report~~] provide such documentation to the department.

(c) The department shall provide an exemption from [~~this requirement~~] the requirements imposed by subdivision (a) of this section to anyone who requests such an exemption and who (i) clearly demonstrates to the department's satisfaction that there would be no need for him or her to complete such course work or training because of the nature of his or her practice or (ii) that he or she has completed course work or training deemed by the department to be equivalent to the standards for course work or training approved by the department pursuant to this section. An individual granted an exemption must reapply to continue such exemption every four years.

(d) The department shall consult with organizations representative of professions, institutions and those with expertise in infection control and HIV [~~and~~], HBV, and HCV with respect to the regulatory standards promulgated pursuant to this section. On or before September first, two thousand eight, and periodically thereafter as determined necessary by

the commissioner, the department, including its patient safety center, in consultation with the council on graduate medical education, shall review and revise the content of the coursework or training in infection control practices as necessary to ensure that such content: (i) reflects the current infection control practices and standards accepted and promoted by the medical and scientific communities; (ii) focuses particular attention on instruction in standards of practice for which compliance is suboptimal based on the department's experience; and (iii) emphasizes the application of infection control standards and practices in outpatient and ambulatory settings.

§ 17. The public health law is amended by adding a new section 239-a to read as follows:

§ 239-a. Infection control guidelines. The commissioner shall develop evidence-based guidelines that identify key infection control practices in inpatient and outpatient medical care settings. Such guidelines shall specifically cover safe injection practices. On or before January first, two thousand nine, and every year thereafter, the department will distribute these guidelines to physicians, specialist assistants and physician assistants. Such guidelines shall also be made publicly available.

§ 18. The public health law is amended by adding a new section 239-b to read as follows:

§ 239-b. Study on multidose vials and disposable medical equipment. The department shall conduct a study on medications packaged in multidose vials and disposable medical equipment, including but not limited to syringes, needles, stopcocks and tubing. Such study shall examine:

1. existing utilization patterns of multidose vials and disposable medical equipment;

2. the potential to improve infection control practices by restricting the use of multidose vials and mandating the use of disposable medical equipment engineered for single use; and

3. the viability of restricting the use of multidose vials and mandating the use of disposable medical equipment engineered for single use. On or before January first, two thousand nine, the commissioner shall provide the governor, the speaker of the assembly, the temporary president of the senate, and the chairpersons of the assembly and senate health committees with a report setting forth the conclusions of the study and the commissioner's recommendations regarding multidose vials and disposable medical equipment.

§ 19. Subdivision 4 of section 2995-a of the public health law, as added by chapter 542 of the laws of 2000, is amended to read as follows:

4. Each physician shall periodically report to the department on forms and in the time and manner required by the commissioner any other information as is required by the department for the development of profiles under this section which is not otherwise reasonably obtainable. In addition to such periodic reports and providing the same information, each physician shall update his or her profile information within the six months prior to the expiration date of such physician's registration period, as a condition of registration renewal under article one hundred thirty-one of the education law.

§ 20. The public health law is amended by adding a new section 2997-b to read as follows:

§ 2997-b. Pamphlet of department programs. The commissioner shall develop and transmit to physicians in the state a pamphlet describing a variety of department programs and initiatives, including but not limited to smoking cessation programs, public health insurance programs,

health and quality improvement information, the patient safety center and physician profiles. Each physician practicing in the state shall make the pamphlet available in his or her practice reception area so that it is accessible to patients.

§ 21. Section 6505-b of the education law, as added by chapter 786 of the laws of 1992, is amended to read as follows:

§ 6505-b. Course work or training in infection control practices. Every dentist, registered nurse, licensed practical nurse, podiatrist, optometrist and dental hygienist practicing in the state shall, on or before July first, nineteen hundred ninety-four and every four years thereafter, complete course work or training appropriate to the professional's practice approved by the department regarding infection control and barrier precautions, including engineering and work practice controls, in accordance with regulatory standards promulgated by the department, in consultation with the department of health, which shall be consistent, as far as appropriate, with such standards adopted by the department of health pursuant to section two hundred ~~[thirty-eight]~~ thirty-nine of the public health law to prevent the transmission of ~~[HIV/HSV]~~ HIV, HBV or HCV in the course of professional practice. Each such professional shall document to the department at the time of registration commencing with the first registration after July first, nineteen hundred ninety-four that the professional has completed course work or training in accordance with this section, provided, however that a professional subject to the provisions of paragraph (f) of subdivision one of section twenty-eight hundred five-k of the public health law shall not be required to so document. The department shall provide an exemption from this requirement to anyone who requests such an exemption and who (i) clearly demonstrates to the department's satisfaction that there would be no need for him or her to complete such course work or training because of the nature of his or her practice or (ii) that he or she has completed course work or training deemed by the department to be equivalent to the course work or training approved by the department pursuant to this section. The department shall consult with organizations representative of professions, institutions and those with expertise in infection control and HIV ~~[and]~~, HBV and HCV with respect to the regulatory standards promulgated pursuant to this section.

§ 22. Section 6524 of the education law is amended by adding a new subdivision 11 to read as follows:

(11) No physician may be re-registered unless he or she, as part of the re-registration application, includes an attestation made under penalty of perjury, in a form prescribed by the commissioner, that he or she has, within the six months prior to submission of the re-registration application, updated his or her physician profile in accordance with subdivision four of section twenty-nine hundred ninety-five-a of the public health law.

§ 23. Subdivision 14 of section 6530 of the education law, as added by chapter 606 of the laws of 1991, is amended to read as follows:

14. A violation of section twenty-eight hundred three-d ~~[or]~~, twenty-eight hundred five-k or subparagraph (ii) of paragraph (h) of subdivision ten of section two hundred thirty of the public health law; or

§ 24. Subdivision 46 of section 6530 of the education law, as added by chapter 786 of the laws of 1992, is amended to read as follows:

46. A violation of section two hundred ~~[thirty-eight]~~ thirty-nine of the public health law by a professional ~~[other than a professional subject to the provisions of paragraph (f) of subdivision one of section twenty-eight hundred five-k of the public health law]~~.

§ 25. Section 6530 of the education law is amended by adding a new subdivision 49 to read as follows:

49. Except for good cause shown, failing to provide within one day any relevant records or other information requested by the state or local department of health with respect to an inquiry into a report of a communicable disease as defined in the state sanitary code, or HIV/AIDS.

§ 26. The criminal procedure law is amended by adding a new section 380.85 to read as follows:

§ 380.85 Reporting sentences to office of professional medical conduct; licensed physician, physician assistant, or specialist assistant.

Whenever a person who is a licensed physician, physician assistant, or specialist assistant or a physician who is practicing under a limited permit or as a medical resident is sentenced for a crime, the court that has sentenced such person shall deliver a copy of the certificate of conviction and provide notification of the conviction and sentence to the office of professional medical conduct.

§ 27. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that section fifteen of this act shall take effect September 1, 2008; and provided further that sections twenty and twenty-two of this act shall take effect January 1, 2009; and provided further that the amendments to paragraph (a) of subdivision 10 of section 230 of the public health law made by sections three and four of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly
