

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the education law and the public health law, in
relation to inquiries or complaints of professional
misconduct (Part __);

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

1 PART __

2 Section 1. Subdivision 28 of section 6530 of the education law, as
3 added by chapter 606 of the laws of 1991, is amended to read as follows:

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

14 § 2. Subdivision 4 of section 206 of the public health law, as amended
15 by chapter 602 of the laws of 2007, is amended to read as follows:

16 4. The commissioner may:

17 (a) issue subpoenas, compel the attendance of witnesses and compel
18 them to testify in any matter or proceeding before him, and may also

1 require a witness to attend and give testimony in a county where he
2 resides or has a place of business without the payment of any fees;

3 (b) require, in writing, the production of any and all relevant docu-
4 ments in the possession or control of an individual or entity subject to
5 an investigation or inquiry under this chapter. Unless a shorter period
6 is specified in such writing, as determined for good cause by the
7 commissioner, the required documents shall be produced no later than ten
8 days after the delivery of the writing. Failure by the subject individ-
9 ual or entity to produce to the department the required documents within
10 the ten day or otherwise specified period shall be a violation or fail-
11 ure within the meaning of paragraph (d) of this subdivision. Each addi-
12 tional day of non-production shall be a separate violation or failure;

13 (c) annul or modify an order, regulation, by-law or ordinance of a
14 local board of health concerning a matter which in his judgment affects
15 the public health beyond the territory over which such local board of
16 health has jurisdiction;

17 [(c)] (d) assess any penalty prescribed for a violation of or a fail-
18 ure to comply with any term or provision of this chapter or of any
19 lawful notice, order or regulation pursuant thereto, not exceeding two
20 thousand dollars for every such violation or failure, which penalty may
21 be assessed after a hearing or an opportunity to be heard;

22 [(d)] (e) assess civil penalties against a public water system which
23 provides water to the public for human consumption through pipes or
24 other constructed conveyances, as further defined in the state sanitary
25 code or, in the case of mass gatherings, the person who holds or
26 promotes the mass gathering as defined in subdivision five of section
27 two hundred twenty-five of this article not to exceed twenty-five thou-
28 sand dollars per day, for each violation of or failure to comply with

1 any term or provision of the state sanitary code as it relates to public
2 water systems that serve a population of five thousand or more persons
3 or any mass gatherings, which penalty may be assessed after a hearing or
4 an opportunity to be heard[.]; and

5 (f) seek to obtain a warrant based on probable cause from a judicial
6 officer authorized to issue a warrant. Such warrant authorizes the
7 commissioner and any person authorized by him to have the authority to
8 search all grounds, erections, vehicles, structures, apartments, build-
9 ings, places and the contents therein and to seize any books, records,
10 papers, documents, computers, electronic devices and other physical
11 objects.

12 § 3. Paragraph (b) of subdivision 12 of section 230 of the public
13 health law, as amended by chapter 599 of the laws of 1996, is amended to
14 read as follows:

15 (b) When a licensee has pleaded or been found guilty or convicted of
16 committing an act constituting a felony under New York state law or
17 federal law, or the law of another jurisdiction which, if committed
18 within this state, would have constituted a felony under New York state
19 law, or when a licensee has been charged with committing an act consti-
20 tuting a felony under New York state or federal law or the law of anoth-
21 er jurisdiction, where the licensee's alleged conduct may present a risk
22 to patients or to the public, which, if committed within this state,
23 would have constituted a felony under New York state law, or when the
24 duly authorized professional disciplinary agency of another jurisdiction
25 has made a finding substantially equivalent to a finding that the prac-
26 tice of medicine by the licensee in that jurisdiction constitutes an
27 imminent danger to the health of its people, or when a licensee has been
28 disciplined by a duly authorized professional disciplinary agency of

1 another jurisdiction for acts which if committed in this state would
2 have constituted the basis for summary action by the commissioner pursu-
3 ant to paragraph (a) of this subdivision, the commissioner, after a
4 recommendation by a committee of professional conduct of the state board
5 for professional medical conduct, may order the licensee, by written
6 notice, to discontinue or refrain from practicing medicine in whole or
7 in part or to take certain actions authorized pursuant to this title
8 immediately. The order of the commissioner shall constitute summary
9 action against the licensee and become public upon issuance. The summary
10 suspension shall remain in effect until the final conclusion of a hear-
11 ing which shall commence within ninety days of the date of service of
12 the commissioner's order, and within ninety days thereafter and other-
13 wise be held in accordance with paragraph (a) of this subdivision,
14 provided, however, that when the commissioner's order is based upon a
15 finding substantially equivalent to a finding that the practice of medi-
16 cine by the licensee in another jurisdiction constitutes an imminent
17 danger to the health of its people, the hearing shall commence within
18 thirty days after the disciplinary proceedings in that jurisdiction are
19 finally concluded. If, at any time, the felony charge is dismissed,
20 withdrawn or reduced to a non-felony charge, the commissioner's summary
21 order shall terminate.

22 § 4. This act shall take effect immediately.