

STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. GOTTFRIED, CAHILL, J. RIVERA, SCHIMEL, GLICK, CLARK, EDDINGTON, ALESSI, MILLMAN, ROBINSON, CARROZZA, JEFFRIES, ESPAILLAT, PAULIN, HOOPER, KELLNER, JAFFEE, REILLY, BARRON, LIFTON, COOK, LANCMAN, PERRY, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. BRENNAN, DINOWITZ, GALEF, HEASTIE, LUPARDO, McENENY, MENG, MILLER, NOLAN, PEOPLES, PHEFFER, ROSENTHAL, SCARBOROUGH, TOWNS, WEISENBERG, ZEBROWSKI -- read once and referred to the Committee on Higher Education -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, the education law and the labor law, in relation to prohibiting participation in torture and improper treatment of prisoners by health care professionals

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

1 Section 1. Legislative policy and intent. This legislation is based
2 on, and is intended to give effect to, international treaties and stand-
3 ards; federal, state and local law; and professional standards relating
4 to torture, improper treatment of prisoners, and related matters. It is
5 guided by two basic principles: (1) health care professionals shall be
6 dedicated to providing the highest standard of health care, with
7 compassion and respect for human dignity and rights; and (2) torture and
8 improper treatment of prisoners are wrong and inconsistent with the
9 practice of the health care professions. The legislature finds that the
10 conduct prohibited by this act violates the ethical and legal obli-
11 gations of licensed health care professionals. This legislation will
12 further protect the professionalism of New York state licensed health
13 care professionals by authorizing and obligating them to refuse to
14 participate in torture and improper treatment of prisoners, which in
15 turn will protect the life and health of the people of the state and

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

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1 those with whom New York licensed health care professionals interact. A
2 health care professional who comes to the aid of a prisoner should not
3 be presumed to be in violation when she or he is fulfilling the ethical
4 principle of beneficence. In contrast, a health care professional who,
5 for example, attends to a prisoner in order to allow torture or improper
6 treatment to commence or continue is not acting beneficently. Such
7 practices are inconsistent with professional ethics and standards and
8 are violations of this legislation. The legislature is mindful that
9 ordinarily there are limits on New York state's jurisdiction relating to
10 conduct outside the state or under federal authority. However, it is
11 proper for the state to regulate health care professional licensure in
12 relation to a professional's conduct, even where the conduct occurs
13 outside the state; certain wrongful out-of-state conduct is already
14 grounds for professional discipline. Therefore, it is the legislature's
15 intent that this legislation be applied to the fullest extent possible.

16 § 2. The public health law is amended by adding a new section 22 to
17 read as follows:

18 § 22. Participation in torture or improper treatment of prisoners by
19 health care professionals. 1. Definitions. As used in this section, the
20 terms "torture" and "improper treatment" shall be interpreted in accord-
21 ance with applicable international treaties, principles and standards as
22 well as the decisions, observations and recommendations of the corre-
23 sponding interpreting bodies. However, for the purposes of this section,
24 it shall not be an element of either "torture" or "improper treatment"
25 that such acts be committed by a government or non-government actor,
26 entity, or official; under color of law; or not under color of law. As
27 used in this section, unless the context clearly requires otherwise, the
28 following terms have the following meanings:

29 (a) "Health care professional" means any person licensed, registered,
30 certified, or exempt to practice under (i) any of the following articles
31 of the education law: one hundred thirty-one (medicine), one hundred
32 thirty-one-B (physician assistants and specialist assistants), one
33 hundred thirty-two (chiropractic), one hundred thirty-three (dentistry
34 and dental hygiene), one hundred thirty-six (physical therapy and phys-
35 ical therapist assistants), one hundred thirty-seven (pharmacy), one
36 hundred thirty-nine (nursing), one hundred forty (professional midwifery
37 practice act), one hundred forty-one (podiatry), one hundred forty-three
38 (optometry), one hundred forty-four (ophthalmic dispensing), one hundred
39 fifty-three (psychology), one hundred fifty-four (social work), one
40 hundred fifty-five (massage therapy), one hundred fifty-six (occupa-
41 tional therapy), one hundred fifty-seven (dietetics and nutrition), one
42 hundred fifty-nine (speech-language pathologists and audiologists), one
43 hundred sixty (acupuncture), one hundred sixty-three (mental health
44 practitioners), one hundred sixty-four (respiratory therapists and
45 respiratory therapy technicians), one hundred sixty-five (clinical labo-
46 ratory technology practice act), or one hundred sixty-six (medical phys-
47 ics practice), or (ii) article thirty-five of this chapter (practice of
48 radiologic technology).

49 (b) "Torture" means any intentional act or intentional omission by
50 which severe pain or suffering, whether physical or mental, is inflicted
51 on a person for such purposes as obtaining from the person or from a
52 third person information or a confession, punishing the person for an
53 act the person or a third person has committed (including the holding of
54 a belief or membership in any group) or is suspected of having commit-
55 ted, or intimidating or coercing the person or a third person, or for
56 any reason based on discrimination of any kind. It does not include

1 pain or suffering arising only from, inherent in or incidental to lawful
2 sanction.

3 (c) "Improper treatment" means (i) cruel and unusual; or cruel, inhu-
4 man or degrading, treatment or punishment as defined by applicable
5 international treaties and their corresponding interpreting bodies; or
6 cruel and unusual punishment as defined in the United States Constitu-
7 tion or the New York state constitution; or (ii) any violation of subdi-
8 vision three or four of this section.

9 (d) "Prisoner" means any person who is subject to punishment,
10 detention, incarceration, interrogation, intimidation or coercion,
11 regardless of whether such action is performed or committed by a govern-
12 ment or non-government actor, entity, or official; under color of law;
13 or not under color of law.

14 (e) To "adversely affect" a person's physical or mental health or
15 condition does not include causing adverse effects that may arise from
16 treatment or care when that treatment or care is performed in accordance
17 with generally applicable legal, health and professional standards and
18 for the purposes of evaluating, treating, protecting or improving the
19 person's health.

20 2. Knowledge. It shall be an element of any violation of this section
21 that the actor knew or reasonably should have known the nature of his or
22 her conduct. If a health care professional who operates in a closed
23 institution such as a jail or other detention facility, police facility,
24 prison, or psychiatric or military facility, is not given access by the
25 institution to the information necessary to ascertain whether torture or
26 improper treatment has occurred, is occurring or will occur, in order to
27 assess the nature of his or her conduct as covered by this section, the
28 health care professional must presume that the prisoner faces risk of
29 torture or improper treatment.

30 3. General obligations of health care professionals. (a) Every health
31 care professional shall provide every prisoner under his or her profes-
32 sional care with care or treatment consistent with generally applicable
33 legal, health and professional standards as the health care professional
34 is reasonably able to provide under the circumstances, including
35 protection of the confidentiality of patient information.

36 (b) In all clinical assessments relating to a prisoner, whether for
37 therapeutic or evaluative purposes, health care professionals shall
38 exercise their professional judgment independent of the interests of a
39 government or other third party.

40 4. Certain conduct of health care professionals prohibited. (a) No
41 health care professional shall apply his or her knowledge or skills in
42 relation to, engage in any professional relationship with, or perform
43 professional services in relation to any prisoner where the purpose is
44 not to evaluate, treat, protect, or improve the physical or mental
45 health or condition of the prisoner (except as permitted by paragraph
46 (b) of subdivision five of this section).

47 (b) No health care professional shall engage, directly or indirectly,
48 in any act which constitutes participation in, complicity in, incitement
49 to, assistance in, planning or design of, or attempt or conspiracy to
50 commit torture or improper treatment of a prisoner. Prohibited forms of
51 engagement include but are not limited to:

52 (i) providing means or knowledge with the intent to facilitate the
53 practice of torture or improper treatment;

54 (ii) permitting his or her knowledge or clinical findings or treatment
55 to be used in the process of torture or improper treatment;

1 (iii) examining, evaluating, or treating a prisoner to certify whether
2 torture or improper treatment can begin or be resumed;

3 (iv) being present while torture or improper treatment is being admin-
4 istered;

5 (v) omitting indications of torture or improper treatment from records
6 or reports; and

7 (vi) altering health care records or reports to hide, misrepresent or
8 destroy evidence of torture or improper treatment.

9 (c) No health care professional shall apply his or her knowledge or
10 skills or perform any professional service in order to assist in the
11 punishment, detention, or incarceration, interrogation, intimidation, or
12 coercion of a prisoner when such assistance is provided in a manner that
13 may adversely affect the physical or mental health or condition of the
14 prisoner (except as permitted by paragraph (a) or (b) of subdivision
15 five of this section).

16 (d) No health care professional shall participate in the interrogation
17 of a prisoner, including being present in the interrogation room, asking
18 or suggesting questions, advising on the use of specific interrogation
19 techniques, monitoring the interrogation, or medically or psychological-
20 ly evaluating a person for the purpose of identifying potential interro-
21 gation methods or strategies. However, this paragraph shall not bar a
22 health care professional from engaging in conduct under paragraph (c) of
23 subdivision five of this section.

24 5. Certain conduct of health care professionals permitted. A health
25 care professional may engage in the following conduct so long as it does
26 not violate subdivision three or four of this section, it does not
27 adversely affect the physical or mental health or condition of a prison-
28 er or potential subject, and is not otherwise unlawful:

29 (a) appropriately participating or aiding in the investigation, prose-
30 cution, or defense of a criminal, administrative or civil matter;

31 (b) participating in an act that restrains a prisoner or temporarily
32 alters the physical or mental activity of a prisoner, where the act
33 complies with generally applicable legal, health and professional stand-
34 ards, is necessary for the protection of the physical or mental health,
35 condition or safety of the prisoner, other prisoners, or persons caring
36 for, guarding or confining the prisoner;

37 (c) training related to the following purposes, so long as it is not
38 provided in support of specific ongoing or anticipated interrogations:

39 (i) recognizing and responding to persons with physical or mental
40 illness or conditions,

41 (ii) the possible physical and mental effects of particular techniques
42 and conditions of interrogation, or

43 (iii) the development of effective interrogation strategies.

44 6. Duty to report. A health care professional who has reasonable
45 grounds (not based solely on publicly available information) to believe
46 that torture, improper treatment or other conduct in violation of this
47 section has occurred, is occurring, or will occur shall, as soon as is
48 possible without jeopardizing the physical safety of himself or herself,
49 the prisoner, or innocent parties, report such conduct to:

50 (a) a government agency that the health care professional reasonably
51 believes has legal authority to punish or prevent the continuation of
52 torture or the improper treatment of a prisoner or conduct in violation
53 of this section and is reasonably likely to attempt to do so; or

54 (b) a governmental or non-governmental entity that the health care
55 professional reasonably believes will notify such a government agency of
56 the torture or the improper treatment of a prisoner or conduct in

1 violation of this section or take other action to publicize or prevent
2 such torture, treatment or conduct; or

3 (c) in the case of an alleged violation by a health care professional
4 licensed under articles one hundred thirty-one or one hundred thirty-
5 one-b of the education law, a report may be filed with the office of
6 professional medical conduct. In the case of an alleged violation by any
7 other health care professional licensed under title eight of the educa-
8 tion law, a report may be filed with the office of professional disci-
9 pline.

10 7. Mitigation. The following may be considered in full or partial
11 mitigation of a violation of this section by the health care profes-
12 sional:

13 (a) compliance with subdivision six of this section; or

14 (b) cooperation in good faith with an investigation of a violation of
15 this section.

16 8. Applicability. This section shall apply to conduct taking place
17 within or outside New York state, and without regard to whether the
18 conduct is committed by a governmental or non-governmental entity, offi-
19 cial, or actor or under actual or asserted color of law.

20 9. Scope of practice not expanded. This section shall not be construed
21 to expand the lawful scope of practice of any health care professional.

22 § 3. Section 6509 of the education law is amended by adding a new
23 subdivision 15 to read as follows:

24 (15) Any violation of section twenty-two of the public health law
25 (relating to participation in torture or improper treatment of prisoners
26 by health care professionals), subject to mitigation under that section.

27 § 4. Section 6530 of the education law is amended by adding a new
28 subdivision 50 to read as follows:

29 50. Any violation of section twenty-two of the public health law
30 (relating to participation in torture or improper treatment of prisoners
31 by health care professionals), subject to mitigation under that section.

32 § 5. Paragraphs (b) and (c) of subdivision 2 of section 740 of the
33 labor law, as added by chapter 660 of the laws of 1984, are amended and
34 a new paragraph (d) is added to read as follows:

35 (b) provides information to, or testifies before, any public body
36 conducting an investigation, hearing or inquiry into any such violation
37 of a law, rule or regulation by such employer; [~~or~~]

38 (c) objects to, or refuses to participate in any such activity, policy
39 or practice in violation of a law, rule or regulation[+]; or

40 (d) reports or threatens to report any violation of section twenty-two
41 of the public health law (relating to participation in torture or
42 improper treatment of prisoners by health care professionals), subject
43 to mitigation under that section.

44 § 6. Paragraphs (a) and (b) of subdivision 2 of section 741 of the
45 labor law, as added by chapter 24 of the laws of 2002, are amended and a
46 new paragraph (c) is added to read as follows:

47 (a) discloses or threatens to disclose to a supervisor, or to a public
48 body an activity, policy or practice of the employer or agent that the
49 employee, in good faith, reasonably believes constitutes improper quali-
50 ty of patient care; [~~or~~]

51 (b) objects to, or refuses to participate in any activity, policy or
52 practice of the employer or agent that the employee, in good faith,
53 reasonably believes constitutes improper quality of patient care[+]; or

54 (c) reports or threatens to report any violation of section twenty-two
55 of the public health law (participation in torture or improper treatment

1 of prisoners by health care professionals), subject to mitigation under
2 that section.

3 § 7. Severability. If any provision of this act, or any application of
4 any provision of this act, is held to be invalid, that shall not affect
5 the validity or effectiveness of any other provision of this act or any
6 other application of any provision of this act.

7 § 8. This act shall take effect on the first of January next succeed-
8 ing the date on which it shall have become a law.