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### Legislation Impaired Nurses; Series I; File 94

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# LEGISLATION DAIRED NURSES

NEW YORK STATE NURSES ASSOCIATION

## *Memorandum*

**To:** Dr. Hunter

**From:** Wendy Burbank

4/8/88

# #94 LEGISLATION IMPAIRED NURSES

Chapter 607  
Law of '85

## STATE OF NEW YORK

3480--3

A.8239

1985-1986 Regular Sessions

## IN SENATE

March 5, 1985

Introduced by Sen. DONOVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to withdrawal from practice by professional licensees undergoing treatment for drug or alcohol abuse, and making an appropriation therefor

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

- 1 Section 1. The education law is amended by adding a new section sixty-
- 2 five hundred ten-b to read as follows:
- 3 § 6510-b. Temporary surrender of licenses during treatment for drug or
- 4 alcohol abuse. 1. The license and registration of a licensee who may be
- 5 temporarily incapacitated for the active practice of a profession
- 6 licensed pursuant to title eight of this chapter, except professionals
- 7 licensed pursuant to article one hundred thirty-one or article one hun-
- 8 dred thirty-one-b thereof, and whose alleged incapacity is the result of
- 9 a problem of drug or alcohol abuse which has not resulted in harm to a
- 10 patient or client, may be voluntarily surrendered to the department,
- 11 which may accept and hold such license during the period of such alleged
- 12 incapacity or the department may accept the surrender of such license
- 13 after agreement to conditions to be met prior to the restoration of the
- 14 license. The department shall give written notification of such sur-
- 15 render to the licensing authorities of any other state or country in
- 16 which the licensee is authorized to practice. In addition to the forego-
- 17 ing, the department shall also give written notification of such sur-

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

L3D06328-06-5

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1 render, for professionals licensed pursuant to articles one hundred  
2 thirty-two, one hundred thirty-three, one hundred thirty-five, one hun-  
3 dred thirty-seven, one hundred thirty-nine and one hundred forty-one of  
4 this chapter to the commissioner of health or his designee, and where  
5 appropriate to each hospital at which the professional has privileges,  
6 is affiliated, or is employed. The licensee whose license is so surren-  
7 dered shall notify all persons who request professional services that he  
8 or she has temporarily withdrawn from the practice of the profession.  
9 The department may provide for similar notification of patients or  
10 clients and of other interested parties, as appropriate under the cir-  
11 cumstances of the professional practice and responsibilities of the  
12 licensee. The licensure status of such licensee shall be "inactive" and  
13 he or she shall not be authorized to practice the profession and shall  
14 refrain from practice in this state or in any other state or country.  
15 The voluntary surrender shall not be deemed to be an admission of disa-  
16 bility or of professional misconduct, and shall not be used as evidence  
17 of a violation of subdivision three or four of section sixty-five hun-  
18 dred nine of this chapter, unless the licensee practices while the  
19 license is "inactive"; and any such practice shall constitute a viola-  
20 tion of subdivision eight of said section. The surrender of a license  
21 under this subdivision shall not bar any disciplinary action except ac-  
22 tion based solely upon the provisions of subdivision three or four of  
23 section sixty-five hundred nine of this chapter, and only if no harm to  
24 a patient has resulted; and shall not bar any civil or criminal action  
25 or proceeding which might be brought without regard to such surrender. A  
26 surrendered license shall be restored upon a showing to the satisfaction  
27 of the department that the licensee is not incapacitated for the active  
28 practice of the profession, provided that the department may, by order  
29 of the commissioner, impose reasonable conditions on the licensee, if it  
30 determines that because of the nature and extent of the licensee's for-  
31 mer incapacity, such conditions are necessary to protect the health,  
32 safety and welfare of the public. Prompt written notification of such  
33 restoration shall be given to all licensing bodies which were notified  
34 of the temporary surrender of the license.

35 2. There shall be appointed within the department, by the board of  
36 regents, a committee on drug and alcohol abuse, which shall advise the  
37 board of regents on matters relating to practice by professional licen-  
38 sees with drug or alcohol abuse problems, and which shall administer the  
39 provisions of this section. The board of regents shall determine the  
40 size, composition, and terms of office of such committee, a majority of  
41 the members of which shall be persons with expertise in problems of drug  
42 or alcohol abuse. The committee shall recommend to the board of regents  
43 such rules as are necessary to carry out the purposes of this section,  
44 including but not limited to procedures for the submission of applica-  
45 tions for the surrender of a license and for the referral of cases for  
46 investigation or prosecution pursuant to section sixty-five hundred ten  
47 of this chapter if a licensee fails to comply with the conditions of an  
48 approved program of treatment. There shall be an executive secretary ap-  
49 pointed by the board of regents to assist the committee. Determinations  
50 by the committee relating to licensees shall be made by panels of at  
51 least three members of the committee designated by the executive se-  
52 cretary, who shall also designate a member of the state board for the  
53 licensee's profession as an ex-officio nonvoting member of each panel.

54 3. Application for the surrender of a license pursuant to this section  
55 shall be submitted to the committee, and shall identify a proposed

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1 treatment or rehabilitation program, and shall include a consent to the  
2 release of all information concerning the licensee's treatment to the  
3 committee. All information concerning an application, other than the  
4 fact of the surrender of the license and the participation in the pro-  
5 gram and the successful completion or failure of or withdrawal from the  
6 program, shall be strictly confidential, and may not be released by the  
7 committee to any person or body without the consent of the licensee. The  
8 immunity from disciplinary action conferred by this section shall be  
9 conditioned upon the approval of the treatment or rehabilitation program  
10 by the committee and its successful completion by the applicant and the  
11 elimination of the incapacity to practice. Approval of a treatment or  
12 rehabilitation program by the committee shall not constitute a represen-  
13 tation as to the probability of success of the program or any assumption  
14 of financial responsibility for its costs.

15 4. The immunity from disciplinary action conferred by this section may  
16 be revoked by the committee upon a finding that the licensee has failed  
17 to successfully complete the program or that the incapacity to practice  
18 has not been eliminated. Such revocation shall be made only after notice  
19 and an opportunity to be heard, but no adjudicatory hearing shall be  
20 required. The matter shall be referred for appropriate proceedings pur-  
21 suant to section sixty-five hundred ten of this chapter. The license  
22 must be returned unless charges are served pursuant to section sixty-  
23 five hundred ten within thirty days after the revocation of the approval  
24 of the special treatment afforded by this section.

25 5. The commissioner is authorized to adopt regulations to carry out  
26 the purposes of this section, including but not limited to the notice of  
27 temporary inactive status to be required in different professions and  
28 practice situations and the measures required upon temporary withdrawal  
29 from practice.

30 § 2. The sum of sixty thousand dollars (\$60,000), or so much thereof  
31 as may be necessary, is hereby appropriated to the state education  
32 department out of any moneys in the state treasury in the general fund  
33 to the credit of the state purposes account not otherwise appropriated,  
34 for its expenses, including personal service, maintenance and operation,  
35 in carrying out the provisions of this act.

36 § 3. This act shall take effect on the one hundred eightieth day after  
37 it shall have become a law, except that subdivision two of section  
38 sixty-five hundred ten-b, as added by this act, shall take effect  
39 immediately.