



Proposed Legislation Addresses Concerns Over OPMC Expert Objectivity and Requires Chaperones in Hospital Settings

The New York State Senate recently passed (and the Assembly is now considering,) a bill that expands the definitions of Professional Misconduct, mandates the option of chaperones in certain clinical settings, requires the agency to vet its proposed experts for both clinical competence and conflicts of interest. It also adopts both a training regimen and a “zero-tolerance” policy for sexual harassment in the practice of medicine.

In response to concerns raised over qualifications and objectivity of OPMC experts, the bill requires its outside medical experts to disclose conflicts of interest and the bill bars proposed experts who are either under active investigation, subject to prior discipline or even an administrative warning. While the bill requires the proposed expert to disclose conflicts that could favor the subject of an investigation, it does not expressly require the expert to disclose any potential bias against the subject physician.

Before proceeding to an Investigation Committee for consideration of disciplinary charges, OPMC investigators must now, for the first time, submit “*an objective summary statement and recommendation at the conclusion of every investigation*”. By mandating standardized written summaries, the bill reportedly promotes transparency, accountability, and more reliable decision-making.

As stated above, the bill requires the Board for Professional Medical Conduct and OPMC to adopt and publish a formal “zero tolerance policy” for sexual misconduct and conduct annual training for investigators, legal staff and board members on sexual misconduct and sexual harassment.

The bill also formalizes a longstanding preference in favor of chaperones by requiring hospitals, clinics, and other Article 28 facilities (and not private physician practices) to post written notice informing patients of their right to request the presence of a family member or trained chaperone during breast and pelvic examinations of women as well as for genital and rectal examinations of all patients. The enumerated facilities must also provide written notice of this right prior to certain sensitive examinations and document in the patient’s medical record whether a chaperone was requested.

Finally, the bill significantly broadens the scope of professional misconduct by expressly defining Professional Misconduct to include non-consensual examinations of breasts or genitals, and other undefined physical sexual contact. It expands the definitions of “moral unfitness in the practice of medicine” by proscribing the willful physical or verbal harassment, abuse or intimidation of both patients and their surrogates and caregivers.

In response to revelations that New York is one of the few states that does not conduct National Practitioner Data Bank (“NPDB”) queries of medical license applicants, the bill will require the Board to query the NPDB for prior out of state discipline when evaluating applicants for initial licensure and further direct the Commissioner of Health to submit fingerprints of proposed licensees to the Division of Criminal Justice Services.

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