

STATE OF NEW YORK

5493

2013-2014 Regular Sessions

IN SENATE

May 16, 2013

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to enacting the health care professional transparency act

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

- 1 Section 1. Short title. This act shall be known and may be cited as
- 2 the "health care professional transparency act".
- 3 § 2. The education law is amended by adding a new section 6511-a to
- 4 read as follows:

5 **§ 6511-a. Health care professional transparency. 1. Definitions. For**
6 **purposes of this section:**

7 **a. "Advertisement" means any communication or statement,**
8 **whether**

9 **printed, electronic or oral, that names the health care practitioner in**
10 **relation to his or her practice, profession, or institution in which the**
11 **individual is employed, volunteers or otherwise provides health**
12 **care**

13 **services. Advertisement includes business cards, letterhead,**
14 **patient**

15 **brochures, e-mail, internet, audio and video and any other**
16 **communication**

17 **or statement used in the course of business.**

18 **b. "Deceptive" or "misleading" means, but is not limited to, any**
19 **advertisement or affirmative communication or representation**
20 **that**

21 **misstates, falsely describes, holds out or falsely details the health**
22 **care practitioner's profession, skills, training, expertise, education,**
23 **board certification or licensure.**

24 **c. "Health care practitioner" means a person who is licensed, certi-**
25 **fied or registered pursuant to this title.**

26 **2. Advertisement requirements. a. An advertisement for health**
27 **care**

28 **services that names a health care practitioner must identify the type**
29 **of**

30 **license held pursuant to the definitions under this section. The**
31 **adver-**

32 **tisement shall be free from any and all deceptive or misleading**
33 **informa-**

25 **tion.**

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

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1 **b. A medical doctor or doctor of osteopathic medicine may not**
2 **hold**
3 **oneself out to the public in any manner as being certified by a public**
4 **or private board, including, but not limited to, a multidisciplinary**
5 **board, or "board certified," unless all of the following criteria are**
6 **satisfied:**
7 **(1) The advertisement states the full name of the certifying board.**
8 **(2) The board either:**
9 **(i) Is a member board of the American Board of Medical Specialties**
10 **or**
11 **the American Osteopathic Association; or**
12 **(ii) Requires successful completion of a postgraduate training**
13 **program**
14 **approved by the Accreditation Commission for Graduate Medical**
15 **Education**
16 **or the American Osteopathic Association that provides complete**
17 **training**
18 **in the specialty or subspecialty certified, followed by prerequisite**
19 **certification by the American Board of Medical Specialties or**
20 **American**
21 **Osteopathic Association board for that training field and further**

16 successful completion of examination in the specialty or
17 subspecialty

17 certified.

18 c. A health care practitioner providing health care services in this
19 state must conspicuously post and affirmatively communicate the
20 practi-

20 tioner's specific licensure in accordance with this section. This shall
21 consist of the following:

22 (1) The health care practitioner shall wear a photo identification
23 name tag during all patient encounters that shall include (i) the
24 prac-

24 itioner's name; (ii) large bold lettering which specifies the type of
25 license held by the practitioner; and (iii) the expiration date of the
26 license. The name tag shall be of sufficient size and be worn in a
27 conspicuous manner so as to be visible and apparent; and

28 (2) The health care practitioner shall display in his or her office a
29 document that clearly identifies the type of license held by the
30 health

30 care practitioner. The writing shall be of sufficient size so as to be
31 visible and apparent to all current and prospective patients.

32 d. A health care practitioner who practices in more than one office
33 shall be required to comply with these requirements in each
34 practice

34 setting.

35 § 2. Section 6509 of the education law is amended by adding a new
36 subdivision 15 to read as follows:

37 (15) Failing to comply with advertisement and identification
require-

38 **ments pursuant to section sixty-five hundred eleven-a of this article.**

39 § 3. Section 6530 of the education law is amended by adding a new
40 subdivision 50 to read as follows:

41 **50. Failing to comply with advertisement and identification**
require-

42 **ments pursuant to section sixty-five hundred eleven-a of this title.**

43 § 4. This act shall take effect immediately.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S5493

SPONSOR: GRIFFO

TITLE OF BILL: An act to amend the education law, in relation to
enacting the health care professional transparency act

PURPOSE: To ensure appropriate identification of all health profes-
sionals in their one on one interaction with patients and in their
advertisements to the public.

SUMMARY OF PROVISIONS: This bill creates a new section 6511-a of the

Education Law in relation to Health Care professional transparency to require that an advertisement for health care services that names a health care practitioner must identify the type of license by that health care professional and requires that advertisements shall be free from any and all deceptive or misleading information.

This bill would also prohibit physicians from holding oneself out to the public in any manner as being certified by a public or private board including but not limited to a multidisciplinary board or "board certified", unless all of the advertisement states the full name of the certifying board and the board either: is a member board of the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA)) or requires successful completion of a postgraduate training program approved by the Accreditation Commission for Graduate Medical Education (ACGME) or the AOA that provides complete training in the specialty or subspecialty certified, followed by prerequisite certification by the ABMS or AOA board for that training field and further successful completion of examination in the specialty or subspecialty certified.

The bill also requires a health care practitioner providing health care services in this state to conspicuously post and affirmatively communicate the practitioner's specific licensure as defined under this section and specifies that this shall consist of the following: (1) the health care practitioner shall wear a photo identification name tag during all patient encounters that shall include (i) the employee's name; (ii)

large bold lettering which specifies the type of license held by the practitioner; and (iii) the expiration date of the license. The name tag shall be of sufficient size and be worn in a conspicuous manner so as to be visible and apparent; and (2) the health care practitioner shall display in his or her office a writing that clearly identified the type of license held by the health care practitioner. The writing shall be of sufficient size so as to be visible and apparent to all current and prospective patients.

This bill also amends Section 6509 of the Education Law by adding a new subdivision fifteen (15) to make the failure to comply with section 6511-a an act of professional misconduct for non-physician health care professionals.

This bill also amends Section 6530 of the Education Law by adding, a new subparagraph (48) to make the failure to comply with section 6511-a an act of professional misconduct for physicians.

EXISTING LAW: Current law does not require non-physician providers to specify in their advertisements the type of license held by such health care professional. Current law prohibits physicians from making false, fraudulent and misleading advertisements but does not require physicians to specify their specialty credentials such as board certification in their advertisements.

JUSTIFICATION: In studies conducted by the AMA it was found that patients are clearly confused about who provides their medical care. Results of the survey revealed multiple examples of confusion by the public. 67% of respondents believed that a podiatrist was a medical doctor and 50% of the respondents believed that a psychologist was a medical doctor. A mere 69% of respondents believed that an ophthalmologist is a medical doctor. This confusion is exacerbated by advertisements which fail to specify the title and type of license held by the health professional advertising his or her services. Moreover, even within medicine, physicians have trained in certain specialties and have achieved board certification by one of the 24 member boards of the American Board of Medical Specialties or certification by the American Osteopathic Association. Advertisements by health care professionals should assist the public in discerning the qualifications of a health care professional. This can be accomplished by requiring advertisements to specify the license held by the health care professional, and where the professional is a physician, the advertisement should also specify the board certification attained by such physician. Clarity in advertising will enhance public information and decision making on matters affecting the public's choice of health professional. Also, by requiring health care professionals to wear clearly readable identification badges, the patient can be properly informed as to the type of provider with whom they are speaking about their care.

LEGISLATIVE HISTORY: Similar to S.7455/A.8410A of 2011-12.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: Immediate.