

LAWS OF DELAWARE
VOLUME 83
CHAPTER 385
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 300

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO MEDICAL PRACTICE.

WHEREAS, there is significant data and evidence showing that physicians have higher rates of depression, burnout, and suicide than the general population; and

WHEREAS, studies have shown that physicians are far less likely to seek mental health care services than other individuals for reasons including potential stigma and fear of professional licensing actions; and

WHEREAS, there has been significant national attention on the issue of physician well-being in recent years, leading the United States Congress to enact the Dr. Lorna Breen Health Care Provider Protection Act (Pub. L. 117-105. 18 March 2022), which directs resources to removing barriers for physicians and other health care workers seeking mental health care, including consideration of stigma and licensing concerns and actions taken by State licensing boards; and

WHEREAS, in a recent research analysis of state physician reporting laws, Delaware received an “F” grade because the current physician mandatory reporting statute is not consistent with what national experts have recommended as “best practices” for language that meets the requirements of federal law, including the Americans with Disabilities Act of 1990 (Pub. L. 101-336. 26 July 1990); and

WHEREAS, while there are significant public policy interests in protecting the safety of patients and the general public, we must also ensure that physicians are able to seek appropriate treatment for mental health conditions without facing undue stigma and putting their license to practice medicine in jeopardy.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1730, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1730. Duty to report unprofessional conduct and inability to practice medicine.

(a) Every person to whom a certificate to practice medicine is issued has a duty to report to the Board if that person is treating professionally another person who possesses a certificate to practice medicine for a condition defined in § 1731(c) of this title, if, in the reporting person’s opinion, the person being treated may be unable to practice medicine with reasonable skill or safety. ~~The reporting person shall provide the Board with a written report which includes the name and address of the person being treated, the exact condition being treated, and the reporting person’s opinion of whether or not action should be taken under § 1731 of this title.~~ A person reporting to the Board or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant. A person reporting to the Board shall include the information required by the Board in accordance with its current guidance, which may be promulgated by regulation as required. The Board’s guidance, including any template reports that the Board may develop in consultation with the Division, must be communicated to physicians and made available to the public.

Section 2. Amend § 1731, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1731. Unprofessional conduct and inability to practice medicine.

(c) ~~A certificate to practice medicine or an authorizing document to practice another profession or occupation regulated under this chapter is subject to restriction, suspension, or revocation, either temporarily or permanently, in case of the inability of the holder a physician to practice medicine or other profession or occupation with reasonable skill or safety to patients by reason of 1 or more of the following: a mental or physical disability or serious health condition that prevents the physician’s ability to practice medicine in a fully competent and professional manner with reasonable skill and safety to patients. For purposes of this section, a mental or physical disability or serious health condition does not prevent a physician’s ability to practice medicine with reasonable skill and safety when the condition is reduced or ameliorated because of ongoing treatment, with or without~~

medication, or participation in a monitoring program or because of the field of practice, the setting, or the manner of the physician's current medical practice.

- (1) ~~Mental illness or mental incompetence;~~
- (2) ~~Physical illness, including, but not limited to, deterioration through the aging process or loss of motor skill;~~
- (3) ~~Excessive use or abuse of drugs, including alcohol.~~

Section 3. Amend § 1731A, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1731A. Duty to report.

(a) Any person may report to the Board information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of ~~mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.~~ a mental or physical disability or serious health condition that prevents a physician's ability to practice medicine in a fully competent and professional manner with reasonable skill and safety to patients. For purposes of this section, a mental or physical disability or serious health condition does not prevent a physician's ability to practice medicine with reasonable skill and safety when the condition is reduced or ameliorated because of ongoing treatment, with or without medication, or participation in a monitoring program or because of the field of practice, the setting, or the manner of the physician's current medical practice. The following have an affirmative duty to report, and must report, such information to the Board in writing within 30 days of becoming aware of the information:

- (1) All persons certified to practice medicine under this chapter;
- (2) All certified, registered, or licensed healthcare providers;
- (3) The Medical Society of Delaware;
- (4) All healthcare institutions in the State;
- (5) All state agencies other than law-enforcement agencies;
- (6) All law-enforcement agencies in the State, except that such agencies are required to report only new or pending investigations of alleged criminal conduct specified in § 1731(b)(2) of this title, and are further required to report within 30 days of the close of a criminal investigation or the arrest of a person licensed under this chapter.

(b) If a person certified and registered to practice medicine in this State voluntarily resigns from the staff of a healthcare institution, or voluntarily limits that person's own staff privileges at a healthcare institution, or fails to reapply for hospital or staff privileges at a healthcare institution, the healthcare institution and the person shall promptly report in writing such conduct to the Board if the conduct occurs while the person is under formal ~~or informal~~ investigation by the institution or a committee thereof for any reason related to possible unprofessional conduct or possible inability to practice medicine ~~with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness; or excessive use or abuse of drugs, pursuant to~~ by reason of a mental or physical disability or serious health condition that prevents the physician's ability to practice medicine with reasonable skill and safety under § 1731(c) of this title.

(c) Upon receiving a report pursuant to subsection (a) or (b) of this section, or on its own motion, the Board shall investigate any evidence which appears to show that the person reported is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients ~~by reason of mental illness or mental incompetence; physical illness; or excessive use or abuse of drugs, pursuant to~~ by reason of a mental or physical disability or serious health condition that prevents the physician's ability to practice medicine with reasonable skill and safety under § 1731(c) of this title.

Section 4. This Act is to be known as the "Promoting Physician Wellness by Erasing Stigma and Removing Barriers to Mental Health Treatment Act".

Approved July 29, 2022