S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to establishing a penalty and cause of action for the intentional destruction, mutilation or significant alteration of certain medical records

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 3126 of the civil practice law and rules, as amended by chapter 98 of the laws of 1993, is amended to read as follows:

S 3126. Penalties for refusal to comply with order or to disclose. (A) If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or

2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

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

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(B) IF ANY PARTY, OR A PERSON WHO AT THE TIME THAT AN ACTION FOR MEDICAL MALPRACTICE IS COMMENCED OR THEREAFTER IS AN OFFICER, DIRECTOR, MEMBER, EMPLOYEE OR AGENT OF A PARTY OR OTHERWISE UNDER THE PARTY'S CONTROL, INTENTIONALLY DESTROYS, MUTILATES OR SIGNIFICANTLY ALTERS ANY MEDICAL RECORD, THE PARTY OR PERSON SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS FOR EACH SUCH ACT. IN ADDITION, ANY PERSON WHO HAS BEEN INJURED BECAUSE OF SUCH INTENTIONAL DESTRUCTION, MUTILATION OR SIGNIFICANT ALTERATION OF A MEDICAL RECORD MAY BRING AN ACTION AGAINST THE PARTY AND/OR PERSON RESPONSIBLE THEREFOR TO RECOVER DAMAGES IF SUCH DESTRUCTION OF EVIDENCE MADE IT IMPOSSIBLE OR SIGNIFICANTLY IMPEDED THE PLAINTIFF'S ABILITY TO PROVE HIS OR HER CLAIM. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. This act shall take effect immediately and shall apply to any intentional destruction, mutilation or significant alteration of a medical record occurring on or after such date.