

5161--C

2015-2016 Regular Sessions

I N A S S E M B L Y

February 12, 2015

Introduced by M. of A. BRAUNSTEIN, SKOUFIS, MOSLEY, JAFFEE, MILLER, BRINDISI, ARROYO, HOOPER, GOTTFRIED, ZEBROWSKI, COOK, MONTESANO, FINCH, SALADINO, ROBINSON, SEAWRIGHT, FRIEND, RUSSELL, GALEF, KAVANAGH -- Multi-Sponsored by -- M. of A. CERETTO, HIKIND, PALMESANO, PEOPLES-STOKES, SCHIMMINGER, SIMON, TITONE -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the civil rights law, in relation to prohibiting the making and/or broadcasting of visual images of individuals undergoing medical treatment without prior written consent

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

1 Section 1. The public health law is amended by adding a new section
2 2806-c to read as follows:
3 S 2806-C. RESTRICTIONS ON VISUAL IMAGES OF PATIENTS. 1. EVERY PATIENT,
4 IN OR BEING SERVED BY A HEALTH CARE FACILITY, SHALL HAVE THE RIGHT TO
5 HAVE PRIVACY IN TREATMENT AND IN CARING FOR PERSONAL NEEDS, INCLUDING
6 THE MAKING OR BROADCASTING OF A VISUAL IMAGE OF A HEALTH CARE PROCEDURE
7 INCLUDING THE PATIENT, WITH THE EXCEPTION OF MAKING OR BROADCASTING A
8 VISUAL IMAGE FOR THE PURPOSES OF ADVANCING THE HEALTH CARE TREATMENT OF
9 THE INDIVIDUAL, A QUALITY ASSURANCE PROGRAM, THE EDUCATION OR TRAINING
10 OF HEALTH CARE PERSONNEL, OR NECESSARY SECURITY PURPOSES.
11 2. PRIVACY IN TREATMENT SHALL INCLUDE THE OBTAINING BY THE HEALTH CARE
12 FACILITY OF EXPRESS WRITTEN CONSENT ON A SEPARATE DOCUMENT USED SOLELY
13 FOR SUCH PURPOSE FROM AN INDIVIDUAL RECEIVING TREATMENT FROM SUCH FACIL-
14 ITY OR SERVICES PRIOR TO MAKING OR BROADCASTING A VISUAL IMAGE OF SUCH

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

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1 TREATMENT. IN THE CASE OF MAKING OR BROADCASTING A VISUAL IMAGE FOR
2 EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL, THE PATIENT SHALL HAVE
3 THE RIGHT TO KNOW OF AND SHALL HAVE THE RIGHT TO REFUSE THE MAKING OR
4 BROADCASTING FOR THAT PURPOSE. A PERSON LEGALLY AUTHORIZED TO MAKE
5 HEALTH CARE DECISIONS FOR THE PATIENT OR OTHERWISE AUTHORIZED TO CONSENT
6 MAY GRANT SUCH CONSENT OR EXERCISE SUCH REFUSAL IF THE PATIENT CANNOT
7 REASONABLY DO SO DUE TO SUCH PATIENT'S INCAPACITY.

8 3. FOR THE PURPOSES OF THIS SECTION:

9 (A) "HEALTH CARE FACILITY" SHALL MEAN A RESIDENTIAL HEALTH CARE FACIL-
10 ITY, GENERAL HOSPITAL, FREE-STANDING AMBULATORY CARE FACILITY, DIAGNOS-
11 TIC AND/OR TREATMENT CENTER AND CLINIC AUTHORIZED UNDER THIS ARTICLE,
12 AMBULANCE SERVICE AS DEFINED BY SUBDIVISION TWO OF SECTION THREE THOU-
13 SAND ONE OF THIS CHAPTER, VOLUNTARY AMBULANCE SERVICE AS DEFINED BY
14 SUBDIVISION THREE OF SECTION THREE THOUSAND ONE OF THIS CHAPTER, OR
15 CERTIFIED FIRST RESPONDERS AS DEFINED BY SUBDIVISION FIVE OF SECTION
16 THREE THOUSAND ONE OF THIS CHAPTER;

17 (B) "QUALITY ASSURANCE" SHALL MEAN ANY EVALUATION OF SERVICES PROVIDED
18 IN OR BY A HEALTH CARE FACILITY FOR PURPOSES OF IMPROVEMENT IN SAFETY,
19 QUALITY OR OUTCOMES;

20 (C) "EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL" SHALL MEAN A
21 PROGRAM OF EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL OR STUDENTS
22 BEING EDUCATED OR TRAINED TO BE HEALTH CARE PERSONNEL, THAT THE HEALTH
23 CARE FACILITY HAS AUTHORIZED;

24 (D) "BROADCASTING A VISUAL IMAGE" SHALL MEAN TRANSMISSION BY BROAD-
25 CAST, CABLE, CLOSED CIRCUIT, INTERNET OR OTHER TELEVISION OR VISUAL
26 MEDIUM; SOCIAL MEDIA; OR OTHER SYSTEM BY WHICH IT CAN BE VIEWED IN
27 VIOLATION OF THE PRIVACY RIGHTS AND EXPECTATIONS OF A PATIENT.

28 4. NOTHING IN THIS SECTION SHALL DIMINISH OR IMPAIR ANY RIGHT OR REME-
29 DY OTHERWISE APPLICABLE TO ANY PATIENT.

30 S 2. Section 50-c of the civil rights law, as amended by chapter 643
31 of the laws of 1999, is amended to read as follows:

32 S 50-c. Private right of action. 1. If the identity of the victim of
33 an offense defined in subdivision one of section fifty-b of this article
34 is disclosed in violation of such section, any person injured by such
35 disclosure may bring an action to recover damages suffered by reason of
36 such wrongful disclosure. In any action brought under this section, the
37 court may award reasonable attorney's fees to a prevailing plaintiff.

38 2. IF THE PRIVACY OF AN INDIVIDUAL AS DEFINED IN SECTION TWENTY-EIGHT
39 HUNDRED SIX-C OF THE PUBLIC HEALTH LAW REGARDING THE RIGHT TO HAVE
40 PRIVACY IN TREATMENT AND IN CARING FOR PERSONAL NEEDS, INCLUDING THE
41 MAKING OR BROADCASTING OF A VISUAL IMAGE OF A HEALTH CARE PROCEDURE
42 INCLUDING THE PATIENT, SUCH INDIVIDUAL OR HIS OR HER ESTATE REPRESENTATIVE
43 MAY BRING AN ACTION TO RECOVER DAMAGES SUFFERED BY REASON OF SUCH
44 VIOLATION. IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COURT MAY AWARD
45 REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF. THE CAUSE OF
46 ACTION CREATED HEREIN SHALL SURVIVE THE DEATH OF SUCH INDIVIDUAL.

47 S 3. This act shall take effect immediately.