

STATE OF NEW YORK

163--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. GIANARIS, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Section 3126 of the civil practice law and rules, as
2 amended by chapter 98 of the laws of 1993, is amended to read as
3 follows:
4 § 3126. Penalties for refusal to comply with order or to disclose.
5 (a) If any party, or a person who at the time a deposition is taken or
6 an examination or inspection is made is an officer, director, member,
7 employee or agent of a party or otherwise under a party's control,
8 refuses to obey an order for disclosure or wilfully fails to disclose
9 information which the court finds ought to have been disclosed pursuant
10 to this article, the court may make such orders with regard to the fail-
11 ure or refusal as are just, among them:
12 1. an order that the issues to which the information is relevant shall
13 be deemed resolved for purposes of the action in accordance with the
14 claims of the party obtaining the order; or
15 2. an order prohibiting the disobedient party from supporting or
16 opposing designated claims or defenses, from producing in evidence
17 designated things or items of testimony, or from introducing any
18 evidence of the physical, mental or blood condition sought to be deter-
19 mined, or from using certain witnesses; or
20 3. an order striking out pleadings or parts thereof, or staying
21 further proceedings until the order is obeyed, or dismissing the action

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

LBD03063-04-1

1 or any part thereof, or rendering a judgment by default against the
2 disobedient party.

3 (b) If any party to a medical malpractice action, or a person who is
4 or was an officer, director, member, employee or agent of a party or
5 otherwise under the party's control, intentionally destroys, mutilates
6 or significantly alters any medical record, the party or person shall be
7 subject to a civil penalty of not less than one thousand dollars for
8 each such act, as well as compensatory and punitive damages.

9 (c) Any person who has been injured because of the intentional
10 destruction, mutilation or significant alteration of a medical record
11 shall have a private right of action against the person or entity
12 responsible therefor to recover damages where such destruction, mutila-
13 tion or significant alteration prevented or significantly impeded the
14 ability of the person so injured to prove his or her claim.

15 (d) The provisions of this section are in addition to, but shall not
16 supersede, any other rights or remedies available in law or equity.

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